

APPENDIX

FILED

JAN 29 1973

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1972, 1973

No. 72-1052

ROGER C. B. MORTON, SECRETARY OF THE INTERIOR,
Petitioner,

—v.—

RAMON RUE AND ANITA RUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1973
CERTIORARI GRANTED APRIL 23, 1973

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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA**

Civil Action No. 2408 Tuc.

**RAMON RUIZ AND ANITA RUIZ, for themselves and
others similarly situated, PLAINTIFFS**

vs.

STEWART L. UDALL, Secretary of the Interior; DEFENDANT

**COMPLAINT IN THE NATURE OF MANDAMUS, FOR JUDICIAL
REVIEW AND FOR DECLARATORY JUDGMENT**

The plaintiffs respectfully represent as follows:

I

Jurisdiction and venue of this court are invoked under 76 Stat. 744, 28 U.S.C. Sec. 1361 (1965), which authorizes mandamus suits in the United States District Courts; under 80 Stat. 1111, 28 U.S.C.A. Sec. 1391 (1967), which provides for venue in suits against federal officers; under 80 Stat. 392 (1966), 5 U.S.C.A. Sec. 703 (1967), which provides for judicial review of administrative actions; under 62 Stat. 964 (1949), 28 U.S.C. Sec. 2201, 2202 (1956), which provides for declaratory judgments; and under 62 Stat. 931, 28 U.S.C. Sec. 1337 (1965) which provides for jurisdiction over Acts of Congress regulating commerce.

II

This is an action against Defendant in his official capacity as Secretary of the Interior to obtain an order and judgment of this court requiring Defendant to order completion of proceedings to provide plaintiffs with general assistance benefits, to overrule the administrative decision in this case, and to remove the requirement of the Bureau of Indian Affairs that a recipient of the Bureau's general assistance benefits reside on an Indian reservation.

III

This action is brought on behalf of the Plaintiffs as well as on behalf of each and all other persons similarly situated who are citizens and residents of the United States, American Indians and who are otherwise eligible to receive general assistance benefits under the regulations of the Department of the Interior, to wit, 66 I.A.M. 3.1 (Dec. 30, 1965), but who are denied said assistance and benefits by Defendant or his employees under the residency requirement set out at 66 I.A.M. 3.1.4(A). This class action is brought for the reason that other persons in the class are so numerous as to make it impracticable to bring them all before the Court; and the right of Plaintiffs, which is the subject of this action, is typical of all these persons; the Plaintiffs will adequately and fairly represent and protect the interests of all such persons and there are common questions of law or fact common to Plaintiffs and all such persons. That further, the party opposing the class, Defendant herein, has acted on grounds generally applicable to Plaintiffs and to all such persons as a class.

IV

Plaintiffs are citizens of the United States, American Indians and members of the Papago Tribe of Arizona. Plaintiffs reside with their minor daughter in Ajo, Arizona.

V

Plaintiffs reside at Ajo, Arizona, in a community of Indians commonly known as the "Indian Village." Plaintiffs left the Papago Indian Reservation in 1940 in order to seek employment at the mines in Ajo operated by the Phelps Dodge Company. The mines have been closed by strike since July, 1967, causing great hardship to Plaintiffs.

VI

Stewart L. Udall as the Secretary of the Interior, has his office in the District of Columbia, and is charged with supervision of expenditures authorized by 42 Stat. 208 (1921), 25 U.S.C. Sec. 13 (1965), the statute which authorizes welfare payments to Indians. Purporting to act under that statute, Defendant has promulgated regulations pertaining to eligibility for general assistance payments to Indians.

VII

Plaintiffs applied for general assistance benefits from the Bureau of Indian Affairs at Sells, Arizona, on December 11, 1967, and were denied benefits by letter of December 13, 1967. Plaintiffs appealed to the Superintendent of the Papago Indian Agency, and were denied benefits on December 27, 1967. Plaintiffs appealed to the Phoenix Area Director of the Bureau of Indian Affairs and a hearing was held in Ajo, Arizona on January 23, 1968. A final administrative decision denying benefits was rendered January 25, 1968, by the Acting Area Director of the Phoenix Area Office, on the sole ground that Plaintiffs resided outside the boundaries of the Papago Reservation, contrary to the regulations in question.

VIII

No further administrative appeal is available to Plaintiffs. Plaintiffs have exhausted their administrative remedies by complying with the Department of Interior regulations set out in 66 I.A.M. 3.1.9 (1965).

IX

Plaintiffs sought welfare assistance from the state of Arizona November 20, 1967, and were denied. No state welfare is available to plaintiffs. But for plaintiffs residence off the reservation, they would be eligible for general assistance from the Bureau of Indian Affairs. Other Indians in similar conditions who reside on reservations

in Arizona are given general assistance from the Bureau of Indian Affairs without the necessity of any application for assistance from the state of Arizona.

X

The statute authorizing expenditures for welfare payments to Indians is 42 Stat. 208 (1921), 25 U.S.C. Sec. 13 (1965), according to the regulations of the Department of the Interior. This statute states that the expenditures are "for the benefit, care and assistance of the Indians throughout the United States. . . ." The Defendant therefore has no authority to limit welfare payments to Indians residing on Indian reservations, and such a limitation is contrary to the intent of Congress, which intent was the alleviation of poverty among Indians throughout the United States.

XI

It has been the policy of the Congress and the Bureau of Indian Affairs to encourage Indians to leave reservations to seek better employment opportunities. The residence requirement in question conflicts with this policy, and thus the requirement has no reasonable basis in law or fact.

XII

Classification of Indians on the basis of residency on Indian reservations to determine eligibility for welfare payments is arbitrary and discriminatory, and is a violation of the due process clause of the Fifth Amendment of the United States Constitution.

XIII

The denial of general assistance and other social, educational and financial benefits to Indians because they reside off reservations discourages Indians from leaving reservations or forces their return to reservations to obtain such benefits, and thus impinges on the freedom of

travel of Indians, contrary to the due process clause of the Fifth Amendment, and is an abridgement of the privileges and immunities of United States citizenship, and thus prohibited by Article IV, Section 2 of the United States Constitution.

XIV

Plaintiffs as American Indians are wards of the federal government regardless of their residency outside the boundaries of the Papago Reservation. Defendant cannot abandon his responsibilities to Plaintiffs merely on the basis that Plaintiffs have taken up residency off the Papago Reservation.

Plaintiffs pray that the court do one or more of the following:

1. Order the Defendant to order the completion of administrative proceedings to the end that Plaintiffs be granted general assistance payments according to their need, but including payments retroactive to the date of their application for such assistance regardless of their place of residence;
2. Reverse or overrule the administrative decision rendered by the acting Area Director of the Bureau of Indian Affairs on January 25, 1968, insofar as that decision was based on the residency of Plaintiffs off the reservation, and order payment of monies to Plaintiffs;
3. Declare unconstitutional or without Congressional authorization the rule of the Department of the Interior that no Indian may receive general assistance unless he resides on an Indian reservation;
4. Order the Defendant to require the Bureau of Indian Affairs to grant general assistance payments to In-

dians residing outside Indian reservations where otherwise qualified for such payments;

5. Grant any other and further relief the court may deem just and proper.

/s/ Ramon Ruiz
RAMON RUIZ,
Plaintiff

/s/ Anita Ruiz
ANITA RUIZ,
Plaintiff

PAPAGO LEGAL SERVICES PROGRAM

/s/ Roger C. Wolf
ROGER C. WOLF
P.O. Box 246
Sells, Arizona 85634
Attorney for Plaintiff

STATE OF ARIZONA)
) SS
COUNTY OF PIMA)

RAMON RUIZ and ANITA RUIZ, being first duly sworn, depose and say: That they are the plaintiffs in the above entitled action; that the foregoing Complaint has been read to them by their attorney and that they know the contents therein, and that the same is true of their own knowledge, except as to those matters stated upon information and belief, and as to those matters they believe them to be true.

/s/ Ramon Ruiz
RAMON RUIZ
Plaintiff

/s/ Anita Ruiz
ANITA RUIZ,
Plaintiff

Subscribed and sworn to before me this 16th day of February, 1968, by Ramon Ruiz and Anita Ruiz.

/s/ Roger C. Wolf
Notary Public

My commission expires:

My Commission Expires June 7, 1971

Copy of the foregoing mailed this
19th day of February, 1968, by
registered mail, to:

Stewart L. Udall, Secretary of the Interior
Department of the Interior Building
Washington, D.C. 20240

Mr. W. Wade Head
Area Director
Bureau of Indian Affairs
Phoenix Area Office
Box 7007
Phoenix, Arizona 85011

Hon. Ramsey Clark
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

ATTACHMENT TO COMPLAINT
PARTIAL ADMINISTRATIVE RECORD

RETURN RECEIPT REQUESTED

SOCIAL SERVICES

January 25, 1968

Mr. and Mrs. Ramon Ruiz
P.O. Box 849
Ajo, Arizona 85321

Dear Mr. and Mrs. Ruiz:

I have reviewed your application to the Papago Indian Agency for general assistance on December 11, 1967, the denial by the Agency on December 13, 1967, the appeal to the Superintendent, the denial by the Superintendent on December 27, the appeal to the Area Office dated December 28, 1967 with amendment dated January 5, 1968, and the transcript of the hearing conducted by Mr. William C. Newton, Area Social Worker, on January 23, 1968 at Ajo.

According to your statements, you are a resident of the City of Ajo and do not reside on the Papago Reservation. Since the Bureau of Indian Affairs manual 66 IAM 3.1.4A states, "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma," it is my decision that you are not eligible for general assistance and that the Papago Indian Agency was correct in denying assistance to you.

Sincerely yours,

/s/ M. L. SCHWARTZ
Acting Area Director

cc: Mr. Wolf
Supt., Papago Agency

FAIR HEARING ON DENIAL OF APPLICATION FOR GENERAL
ASSISTANCE BY RAMON AND ANITA RUIZ, AJO,
ARIZONA, JANUARY 23, 1968, 10:00 A.M.

Persons present:

Mr. and Mrs. Ramon Ruiz
Mr. Ignacio, Interpreter
Mr. Roger Wolf, Papago Legal Aid
Mr. Everett Downing, Social Worker, Papago Indian
Agency
Mr. William C. Newton, Area Social Worker, Phoenix
Area Office
Mr. Dean Krahulec, Supervisory Social Worker,
Papago Indian Agency
Mrs. Dorothy Beamis, Secretary, Phoenix Area Office

Newton: I am William Newton. I am the Area Social Worker for the Bureau of Indian Affairs. My job is to develop and operate a welfare program in the Phoenix Area.

Ignacio: Does this include Ajo?

Newton: No, it includes any Indian on reservations in Arizona.

Newton: I would like to discuss with you what we are going to do today. First, that we will ennumerate the points of eligibility. I will talk first about my understanding about where we have gone, where we are at this stage, and Mr. Krahulec will talk briefly about the findings of eligibility from the agency. Then we would like to have a statement from Mr. Ruiz or Mr. Wolf. Then if there is any evidence, and at this point if they wish to use their counsel, their attorney, they are free to do so. We would assume in that connection they will probably want to rely upon Mr. Wolf primarily. I will not here today make a decision but will tell you my recommendations to the Area Director who makes the decision.

The problem here, as I understand it, is that Mr. and Mrs. Ruiz have applied for general assistance and were

found to be ineligible on the basis of residence. I will now ask Mr. Krahulec, Supervisor of Social Services of the Papago Indian Agency, to report the agency's findings.

Krahulec: Application was made by Mr. and Mrs. Ruiz on December 11, 1967 and the information they provided at that time in the agency office in Sells was that they claimed to need financial assistance and also that they did live off reservation. They made their application and were advised then that this would be discussed with the social worker. When this was brought to our attention, a telephone call was made to the Pima County Welfare Department. The reason for our telephone call was because we know the eligibility requirements are such that you would not be eligible because you were off reservation, so we called to see if general assistance through the Pima County would be available to you.

Wolf: A point of clarification. Did you call while they were in the office?

Krahulec: No, this was later. Unfortunately, there was no general assistance available through the county because it would be available only to persons temporarily disabled. We had to deny general assistance to Mr. and Mrs. Ruiz because of their residence which is off reservation.

Wolf: When did you tell them they were ineligible?

Krahulec: By letter on December 13.

Newton: Do you have a statement to make?

Ruiz: Not yet.

Newton: Do you understand the basis for denial?

Wolf: We have been over this.

Newton: This is for clarification of the record, that they do understand the basis for the denial. Let us briefly review some of the facts which you did not bring out, Mr. Krahulec. I understand that Mr. Ruiz has been a miner in Ajo and since last July has been without employment because of the strike.

Wolf: That is correct.

Newton: Would you give me a statement of what your current income is?

Ruiz: All that I have is the union strike benefits.

Newton: What is the amount of it?

Ruiz: \$15.00 a week.

Newton: This is you only income at the present time?

Ruiz: That is all.

Newton: Mr. Krehulec, I understand that you have a statement from the Pima County Welfare Department in writing. Could you read the letter you received from them?

Krahulec: This is a letter written on January 19, 1968 by Margaret Omer, Pima County Welfare Department, to the Papago Indian Agency regarding Mr. Ruiz. It reads, "This is in response to Mr. Krahulec's telephone inquiry of 1/17/68.

"Mr. Ruiz has not made written application for assistance from this Department, but on 11/20/67, on the referral of Mr. Roger C. Wolf, did inquire at the Ajo branch office about the possibility of this Department providing him with \$100.00 for the reported purpose of getting his truck out of legal impoundment from the Phoenix area. "This Department does not have funds available for such purposes, and as Mr. Ruiz is a striking miner with Union membership which provides monthly benefits during strike periods, he is not eligible for Emergency Relief.

"Mr. Ruiz was certified for Surplus Commodities, and referred back to Mr. Wolf for legal counsel on the matter of the impoundment of his truck."

Newton: I requested Mr. Krahulec that we obtain any information from Pima County as to whether there was a formal application for assistance and a formal denial.

Wolf: You consider this a formal denial?

Newton: I do not. There was no formal application made for assistance.

Wolf: Isn't this somewhat moot since there is no program available for him?

Newton: I think this is not a clear one. The general assistance provisions of the State do not seem to provide assistance for an employable person but the emergency assistance provision of the manual lists four priorities within the money available and this case falls into the third priority. And, at the State Board meeting on January 13 an action was taken to reaffirm the emergency program. I have not been able to get a copy of the minutes of that meeting and they have not been published, but I understand the scope of emergency assistance, which includes assistance to employable persons, was broadened.

Wolf: This was long after they applied.

Newton: I mention this because of the fact their manual has four priorities for assistance and number three is assistance to employable persons. This was in affect in December.

Wolf: Disabled?

Newton: This is not disabled. Requirements are residence in the State and eligibility in terms of need.

(Short discussion regarding difference between ADC-Unemployed Persons program and emergency assistance.)

Newton: There are three categories I am thinking of in terms of application. First, general assistance. This is not open to employable persons. The second is emergency assistance—assistance for a limited period to persons who are employable, which includes a family with an employable person. Third, ADC for unemployed persons.

Wolf: This letter you just read said that as a striking union member he would be ineligible.

Newton: Yes, their manual does not so limit them. This would appear to be a local administrative decision. I would expect it to be generally prevailing within the State of Arizona.

Wolf: I didn't want you to say that you will have to go back to Pima County before applying.

Newton: There is no question about what our recommendation. . . . (short discussion)

Newton: Now the Bureau of Indian Affairs manual provides with respect to residence, "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions of the Indian Affairs in Alaska and Oklahoma." The Area Office and the Papago Indian Agency are required to follow the instructions in the manual. Now, I would like to know whether you have additional evidence or testimony. I have some interpretations—letters that have come from the Secretary of the Interior in relation to this subject which I will share with you, but at this time is there any additional testimony or evidence that you wish to present.

Wolf: Yes, I would like to point out that I called Ajo Welfare myself and talked to a Mr. Berry here in Ajo, Pima County Welfare and he, too, said that they had been in. He said they were ineligible for any welfare from the County Welfare and I might add he said that one bill they had set up for general assistance in Arizona was written in such a restricted way that only three or four people had qualified for it in the last six or eight months and they finally dropped the program. I think it is quite clear. I wish to emphasize there is no State welfare available for these people. They did go to State Welfare and if they were not denied the welfare, they were given no encouragement and sent away and you cannot expect unsophisticated people to make application on written forms, etc., etc., and to fight the State Welfare Department. I hope we don't have any difficulty with you insisting they should go through the gambit of State Welfare appeals and procedures.

Newton: I think this would not be pertinent to our denial. However, I believe that you cannot assume there has been a denial until there has been an application. Let me explain. Just last week a woman, an Apache, applied in Maricopa County for ADC and at the suggestion of the social worker signed a withdrawal of her application, not knowing, however, that in doing so she was withdrawing her application. Therefore, I suggested that always

there should be a formal application and formal denial which then gives the basis for the decision.

Wolf: Isn't this a problem of Pima County rather than my client's lack of desire to ask for welfare?

Newton: Yes, unsophisticated people do not know how to apply.

Wolf: I think the whole discussion of State Welfare is irrelevant to the Bureau of Indian Affairs. For one thing, I understand Bureau of Indian Affairs welfare has often given temporarily while the client's applications are sent to State Welfare.

Krahulec: Pending approval of the application, yes.

Wolf: I think, if anything, it is your problem rather than the client's assuming the need for welfare. In other words, I think that as far as the duty of the Bureau of Indian Affairs to applying for general assistance for my client, the action or antics of the State Welfare Department has nothing to do with this case.

Newton: I think this is the important aspect, a very pertinent aspect because of the fact that all of our premise is based on decision relating to assistance for reservation Indians and limited to reservations, and it is these limits about which we are concerned and these premises were based primarily on the Indian's identification with the rest of the community when he is off reservation.

Wolf: I want to clarify something. Isn't it strictly a geographical rather than identification of Indian in the community?

Newton: I think the thesis on which this was presented is that Indians off reservation are in the same condition as their neighbors who are not Indian and that they, therefore, have no special relationship to the Federal Government when off reservation. This is the thesis on which it is based. Nevertheless, geographical lines do make difference. I have seen situations where a highway divides and makes for ineligibility.

Wolf: Then it really isn't a problem of sense of community?

Newton: No, it is not sense of community. Do you want me to read material we have from the Secretary which relates to this case? Primarily it is interpretation with relation to assistance to reservation residents.

Wolf: When were they written?

Newton: I have two documents here. Both in 1960—March and April 1960. This was written to the Governor of North Dakota and I think it would be appropriate for me to read it at this time. The question of whether you want it translated is up to you.

Wolf: Have you communicated with Washington on this case? They have reviewed it?

Newton: They have supported us fully in the situation and they supplied this additional paper which I could not find in my files.

Wolf: What is it?

Newton: Their comments on a bill which was introduced in Congress to provide assistance to off reservation Indians with one hundred percent Federal funds. Comments on that bill which supports the Congress' constant rejection of all bills to provide assistance to other than those on reservation. This is the thesis on which we continue our practice here.

Wolf: This is a proposal, but did Congress act?

Newton: This letter comments. It did not get to the floor.

Wolf: I think this could be saved and included in your opinion for the Area Director.

Newton: Then I will state that my recommendation to the Area Director will be that the denial of assistance by the Papago Indian Agency was a correct denial because the position of the Bureau of Indian Affairs as cited in the Bureau manual limits eligibility for general assistance to Indians living on reservation. I am not making a decision here. I am making a recommendation to the Area Director that the decision of the Papago Indian Agency

is correct because policy limits eligibility to Indians on reservation.

Is there anything further that the Ruizes would like to say or you, Mr. Wolf, insofar as the hearing itself is concerned.

Wolf: I would like to find out whether you have ever established their eligibility other than their residence off the reservation.

Newton: No, we have not. We can proceed with that now if you would like us to do so.

Wolf: It might be helpful.

Newton: Mr. Ruiz, what wage did you earn when you were working for the mine?

Ruiz: \$21.60 per day.

Wolf: Is that gross? Before taxes?

Ruiz: Gross.

Newton: How long did you work with the mine?

Ruiz: Since 1940.

Newton: Did I understand you to say that since July you have had no income except striker's benefits?

Ruiz: That is right.

Newton: \$15.00 per week. Would you tell us about the nature of the credit you get from the company?

Ruiz: \$35.00 per week coupon books for groceries.

Newton: How much do you now owe on that credit?

Ruiz: I haven't figured it out.

Wolf: Since July, \$140 a month would be something in the neighborhood of \$840.00 in six months.

Newton: You have taken full advantage of it?

Ruiz: Yes.

Newton: You support other children? You have in your application at the agency indicated there were three in your family. Is this correct? Your wife, a daughter Mary Ann, born 1953, and that is all. You have been supporting others?

Ruiz: We have been helping the two older boys, one in service, and one married daughter. We help them along.

Newton: These two older boys are not sending any money home?

Ruiz: No. October 23 the younger boy went in the service.

Wolf: Have they given you any money since the strike began to the boys?

Ruiz: About \$50 sent away to the older boy.

Newton: Do you own your own home?

Ruiz: Yes.

Newton: What is the value of your home?

Ruiz: We bought it for \$300. It was two rooms and we have added three more rooms since we got it for \$300.

Wolf: When did you buy it?

Ruiz: 1947.

Newton: Mr. Ruiz, do you own a pickup or car?

Ruiz: The pickup.

Newton: What year is it?

Ruiz: 1963 Chevrolet.

Newton: Is this still impounded?

Ruiz: Yes.

Wolf: I think I should clarify that. They lost his registration plate under the financial responsibility section of the law. I am still helping them get back their registration plate. However, they have had to put their car in

for repairs and the mechanic has a mechanic's lien of close to \$200 on the car and won't release the car until they pay the debt.

Newton: It is not impounded by the police?

Ruiz: That is right.

Wolf: How much do they owe?

Ruiz: \$170 owed.

Wolf: Are they still paying off the contractual sales chattel mortgage?

Ruiz: Yes.

Wolf: How much do they owe?

Ruiz: Six payments we have to make.

Wolf: Are they behind on their payments?

Ruiz: Yes.

Wolf: Do you need the car for transportation?

Ruiz: Yes. I need it especially now to look around for a job.

Wolf: How much are these payments they owe?

Ruiz: \$65 a month.

Newton: \$65 a month and owe six payments.

Wolf: Any other debts?

Ruiz: The store and I guess that is all.

Newton: I understand you did not serve in the military.

Ruiz: No.

Newton: Mrs. Ruiz, have you been employed?

Mrs. Ruiz: Two days a week.

Newton: Where do you work?

Mrs. Ruiz: Mrs. Counts, a field nurse.

Newton: What is the address of Mrs. Counts?

Mrs. Ruiz: Do not know, probably in the phone book.

Wolf: How much does she make?

Mrs. Ruiz: \$1.00 an hour; four hours a day; two days. \$6.00 a week.

Newton: Do you have any bank accounts?

Ruiz: No.

Newton: Do you have any insurance? Life insurance?

Ruiz: The company gives every employee life insurance.

Newton: Do you know what the face value on that is?

Wolf: I think that is immaterial. The Bureau of Indian Affairs manual states they do not have to turn in a policy.

Newton: We would routinely explore any assets; not with respect to conversion, but to helping families know what their assets are. These are routine questions for us. One of the great problems of Indian clients is they do not understand their net worth and we would like them to understand their net worth as fully as possible.

Do you have cattle or other stock?

Ruiz: No.

Newton: Do you have any cash resources of any kind?

Ruiz: No.

Newton: We do not have your Social Security number and I believe that we should have that.

Wolf: What tally of debts do you have? I have \$1400.

Ruiz: My Social Security Number is 526-22-6570 Ramon Ruiz.

Newton: How long have you lived in your present home? You moved in approximately 1940 and you have lived there ever since?

Ruiz: Since 1947.

Newton: Do you own any property other than your home?

Ruiz: No.

Newton: I think that is all the questions I have relating to eligibility.

Wolf: I might ask one more. I add up your debts \$975 to the company store, \$309 balance owing on your car and \$170 for repairs on your car, which totals \$1,435 in debts. Does that sound right?

Ruiz: That is right. I owe \$400 to the hospital.

Newton: What is the hospital bill for?

Ruiz: Our daughter-in-law was sick in the hospital and we were paying for her bill.

Newton: This is a little surprising.

Wolf: When was that incurred?

Ruiz: Last year.

Wolf: Before or after the strike?

Ruiz: Before the strike.

Wolf: Why did they pay their daughter-in-law's bills? Was the son unemployed?

Ruiz: We are still helping them along.

Wolf: That makes \$1,835 in the hole.

Newton: It would appear to me this is not their bill.

Wolf: They probably signed a note.

Newton: Perhaps they did, but one they would not have been required to sign.

Wolf: But it adds to the financial picture.

Newton: Mr. Ruiz, have you had any employment since last July?

Ruiz: No, none.

Newton: Without verification of all these facts, we would not say you would be eligible. I would say, on the basis of the facts as presented, it would appear that with \$21 to \$23 per week income you would be eligible for supplementary assistance, other than with respect to the matter of residence.

Krahulec: Yes.

Newton: That would be eligibility for a supplemental grant if it were not for their residence. They would be eligible for a supplemental grant on the basis of the statements made here. Without verification, it would appear that they would be eligible for supplementary grant to their wages.

Wolf: Do you usually verify this?

Newton: Yes.

Wolf: How long does it take?

Newton: We will not proceed to verify this since they are ineligible. We intend to make a recommendation of ineligibility solely on the grounds of eligibility as to residence and not the record as to eligibility on other grounds. Well, I think this is as far as we would go, as it would seem appropriate to go. Now, is there anything further that you would like to discuss?

Wolf: I have one further thing. How big is your house?

Ruiz: 12 x 12 on three rooms and the kitchen about 10-foot square. Then the bathroom.

Newton: We will present our findings with the recommendation going to the Area Director for affirmation of denial by the agency.

Wolf: Can you tell me when I can expect a written opinion from the Area Director?

Newton: I would assume within a week. I cannot be held to that. I do know that Mr. Schwartz, who is going to review this, is out of town. He is Assistant Area Di-

rector of Community Services and signs all Area Director materials for this branch. It is delegated to him.

* * * *

Above recorded and transcribed by

(signed) Dorothy W. Beamis
DOROTHY W. BEAMIS

SOCIAL SERVICES

RETURN RECEIPT REQUESTED

January 25, 1968

Mr. and Mrs. Ramon Ruiz
P.O. Box 849
Ajo, Arizona 85321

Dear Mr. and Mrs. Ruiz:

I have reviewed your application to the Papago Indian Agency for general assistance on December 11, 1967, the denial by the Agency on December 13, 1967, the appeal to the Superintendent, the denial by the Superintendent on December 27, the appeal to the Area Office dated December 28, 1967 with amendment dated January 5, 1968, and the transcript of the hearing conducted by Mr. William C. Newton, Area Social Worker, on January 23, 1968 at Ajo.

According to your statements, you are a resident of the City of Ajo and do not reside on the Papago Reservation. Since the Bureau of Indian Affairs manual 66 IAM 3.1.4A states, "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma," it is my decision that you are not eligible for general assistance and that the Papago Indian Agency was correct in denying assistance to you.

Sincerely yours,

/s/ M. L. Schwartz
Acting Area Director

cc: Mr. Wolf
Supt., Papago Agency

**IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA**

Civil Action No. _____

**RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS**

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

MEMORANDUM OF POINTS AND AUTHORITIES

**1. Unconstitutionality of residence requirements for
welfare applicants:**

- 1) Harrell v. Tobriner, etc. (Sept. 11, 1967, U.S.
D.C. for Dist. Col., No. 1497-67), and cases
cited**
- 2) Thompson v. Shapiro, 270 F. Supp. 331 (D.C.
Conn., 1967), and cases cited**
- 3) Porter v. Graham (No. Civ. 2348 Tuc., U.S.
D.C. Ariz., temporary injunction, Jan. 1968),
and cases cited**

**2. Equal protection under Due Process Clause of Fifth
Amendment:**

- 1) Bolling v. Sharpe, 347 U.S. 497**
- 2) Schneider v. Rush, 377 U.S. 163, 168**

**3. Doubtful expressions of Congress to be construed
in favor of Indians:**

- 1) Squire v. Capoeman, 351 U.S. 1, 6 (1956)**
- 2) Carpenter v. Shaw, 280 U.S. 363, 367 (1930)**

**4. Appropriations to Bureau of Indian Affairs not
limited to reservations:**

- 1) 80 Stat. 170, 1 U.S. Code Cong. and Admin.
News, 195, 196 (1967)**

PAPAGO LEGAL SERVICES

**/s/ Roger C. Wolf
ROGER C. WOLF
P.O. Box 246
Sells, Arizona 85634
Attorney for Plaintiffs**

ADMINISTRATIVE RECORD PORTIONS
NOT APPENDED TO COMPLAINT

SOCIAL SERVICES
January 25, 1968

Mr. Roger C. Wolf
Directing Attorney
Papago Legal Services Program
Papago Office of Economic Opportunity
P.O. Box 246
Sells, Arizona 85634

Dear Mr. Wolf:

I am enclosing a copy of the decision on the appeal of Mr. and Mrs. Ramon Ruiz for general assistance, a copy of the transcript of the hearing, and copies of the documents Mr. Newton referred to at the time of the hearing.

Sincerely yours,

/s/ M. L. SCHWARTZ
Acting Area Director

Enclosures

cc: Supt., Papago Agency
Washington, Social Services

WCNewton:db

(Enclosures were: Transcript of 1/23/68 hearing; copies of letter 1/20/64 to Mr. Aspinall, letter of 4/4/60 to Mr. Mills; and letter of 3/14/60 to Governor Davis) Letter 1/25/68 to Mr. and Mrs. Ramon Ruiz

January 19, 1968

Mr. John H. Artichoker, Superintendent
U. S. Bureau of Indian Affairs
Papago Indian Agency
P. O. Box 578
Sells, Arizona 85634

Attn.: Mr. Dean Krahulec
Supervisory Social Worker

Re: RUIZ, Ramon—b. 3-16-69
Ajo, Arizona

Dear Mr. Artichoker:

This is in response to Mr. Krahulec's telephone inquiry of 1/17/68.

Mr. Ruiz has not made written application for assistance from this Department, but on 11/20/67, on the referral of Mr. Roger C. Wolf, did inquire at the Ajo branch office about the possibility of this Department providing him with \$100.00 for the reported purpose of getting his truck out of legal impoundment from the Phoenix area.

This Department does not have funds available for such purposes, and as Mr. Ruiz is a striking miner with Union membership which provides monthly benefits during strike periods, he is not eligible for Emergency Relief.

Mr. Ruiz was certified for Surplus Commodities, and referred back to Mr. Wolf for legal counsel on the matter of the impoundment of his truck.

We hope this information is of assistance to you.

Very truly yours,

/s/ M. A. Omer
(Miss) Margaret A. Omer
Administrative Supervisor

MAO:gb
cc: Mr. Dewey Perry
Ajo District Caseworker

NARRATIVE

Re: RUIZ, Ramon & Anita
P.O. Box 849
Ajo, Arizona

12-11-67

Mr. & Mrs. Ramon Ruiz in office on this date requesting general assistance. They had been referred to Social Services by Mr. Wolf, Attorney for Legal Aid Services. Mr. & Mrs. Ruiz had contacted Mr. Wolf for assistance regarding their pick-up truck in which their son was involved in an accident.

Mr. Ruiz stated they needed assistance since he is not working. The Ajo mine where he is employed is on strike. They get a little money (about \$15.00 every two weeks) but this was not enough to meet their monthly needs. They have a daughter who is an 8th grader in Ajo. The Ruizes said they were living in Ajo but were originally from the reservation. Mr. Ruiz is from San Miguel and Mrs. Ruiz is from South Komelic. They were told that since they lived off the reservation their application will probably not be approved but that we would let them know for sure by letter after their case was discussed with the supervisor who was not in the office at this time.

The Ruizes had been denied by the Pima County Welfare Department for G.A. since Mr. Ruiz did not meet the eligibility requirement of being temporarily disabled.

12-13-67

Case discussed with Dr. Downing who denied the application based on the fact that the Ruizes live off reservation. BFA/bfa

12-13-67

Letter sent to Mr. Ruiz informing him that his application for GA is denied based on the fact that he lives in the off-reservation city of Ajo, Arizona. DK:dk

1-4-68 SUMMARY OF EVENTS SINCE 12-13-67

On 12-15-67 this worker received a telephone call from Mr. Roger Wolf, Directing Attorney of the Papago Le-

gal Service, regarding the case of Mr. Ruiz. The purpose of his call was to appeal the decision of denial made by our officer on 12-13-67. This worker asked if there have been any changes in the situation of the Ruiz family since their application . . . with special emphasis on his present residence. Mr. Wolf stipulated that there have been no changes and that the family still lives in Ajo, Arizona, which is off-reservation. This worker then denied the appeal on the basis of the original decision. Mr. Wolf requested this worker to arrange for an appeal hearing with the Superintendent of the Papago Agency.

Arrangements were made for an appeal to be heard by the Superintendent. Mr. Wolf suggested that all he needed was a decision based upon the same facts he has already twice submitted to the Branch of Social Services and that the appeal hearing could be handled over the telephone if this would meet with the approval of the Superintendent. Otherwise Mr. Wolf would be pleased to appear in person.

The Superintendent was advised of this information and the case presented to him on 12-27-67. Information regarding the applicant was given to the Superintendent by the Supervisory Social Worker along with the manual showing that (66 IAM 3.1.1. and 66 IAM 3.1.4A) "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma." After consideration of the case and the manual requirements the Superintendent denied the appeal. Mr. Wolf, Papago Legal Services, was advised of this decision by copy of the denial letter sent to Mr. Ruiz on 12-27-67. Mr. Ruiz was advised, in the letter, that he has the right to appeal this decision to the Phoenix Area Office.

On 12-28-67, received in this office on 12-29-67, the Papago Legal Services submitted an Administrative Appeal from Denial of Welfare to the Phoenix Area Office. On January 4, 1968, the Area Office advised Mr. Ruiz, by letter, that an appeal hearing will be held at the Indian

Community Hall in Ajo, Arizona, at 10:00 AM on 1-23-68.

Notation: Since 12-11-67 when Mr. Ruiz was in the Branch of Social Service office at the Agency, no worker from this office has seen Mr. Ruiz or any member of his family. We have been conducting all of this business through his attorney, Mr. Wolf. We have been making our decisions based upon the expressed information and stipulation by Mr. Wolf that the family situation remains the same and that they continue to live off reservation in the city of Ajo.

/s/ Dean Krahulec
DEAN KRAHULEC:DK
Supervisory Social Worker

[SEAL]

THE PAPAGO TRIBE

**PAPAGO OFFICE OF ECONOMIC OPPORTUNITY
LEGAL SERVICES PROGRAM**

**P. O. Box 246
Sells, Arizona**

January 5, 1968

**Mr. W. Wade Head
Area Director
Phoenix Area Office
124 West Thomas Road
Phoenix, Arizona**

Dear Mr. Head:

Enclosed is an amendment to the Administrative Appeal from Denial of Welfare dated December 28, 1967.

I would appreciate knowing when I can expect a decision on this appeal.

Very truly yours,

**/s/ Roger C. Wolf
ROGER C. WOLF
Directing Attorney
Papago Legal Services
Program**

**RCW/rp
Enclosure**

No.

RAMON RUIZ, *et ux.*, APPELLANTS

vs.

PAPAGO INDIAN AGENCY, U.S. DEPARTMENT OF INTERIOR,
APPELLEES

FIRST AMENDMENT TO ADMINISTRATIVE APPEAL
FROM DENIAL OF WELFARE

The Administrative Appeal from Denial of Welfare in the above captioned case is hereby amended at the fifth line of the second full paragraph, fourth page, by the addition, after the word "payments," of the phrase "retroactive to the date of appellants' original application for assistance (December 11, 1967)".

Subscribed this 5th day of January, 1968, by Roger C. Wolf, counsel for appellant.

/s/ Roger C. Wolf
ROGER C. WOLF
Papago Legal Services
Sells, Arizona 85634

RETURN RECEIPT REQUESTED

SOCIAL SERVICES

January 4, 1968

Mr. and Mrs. Ramon Ruiz
P.O. Box 849
Ajo, Arizona 85321

Dear Mr. and Mrs. Ruiz:

This letter will acknowledge receipt of the decision dated December 27 by John H. Artichoker, Jr., denying general assistance to you.

You are requested to appear at the Indian Community Hall, Ajo, Arizona at 10:00 a.m. on January 23, 1968 for a hearing on your appeal. Mr. William C. Newton, Area Social Worker, will conduct the hearing.

Sincerely yours,

/s/ M. L. SCHWARTZ
Assistant Area Director

cc: Mr. Roger Wolfe, Papago Legal Services
Supt., Papago Agency

Washington office, Social Services

WCNewton:db

(Enclosures to Washington copy of incoming and letter of 12-27-67 by Superintendent Artichoker)

[SEAL]

THE PAPAGO TRIBE

PAPAGO OFFICE OF ECONOMIC OPPORTUNITY
LEGAL SERVICES PROGRAM
P. O. Box 246
Sells, Arizona

December 28, 1967

Mr. W. Wade Head, Area Director
Phoenix Area Office
124 West Thomas
Phoenix, Arizona

Dear Mr. Head:

Enclosed is the appeal of Mr. and Mrs. Ramon Ruiz from the decision of December 27 by John Artichoker denying general assistance to Mr. and Mrs. Ruiz on the grounds that they reside off the reservation. I would appreciate your prompt consideration of this appeal.

I assume you have received a copy of Mr. Artichoker's letter to Mr. Ruiz.

Very truly yours,

/s/ Roger C. Wolf
ROGER C. WOLF
Directing Attorney

RCW/rp

cc. Mr. and Mrs. Ramon Ruiz
Mr. Dean Krahulec

Enclosure

No. —

RAMON RUIZ, *et ux.*, APPELLANTS

vs.

PAPAGO INDIAN AGENCY, U.S. DEPARTMENT OF
INTERIOR, APPELLEES

ADMINISTRATIVE APPEAL FROM DENIAL OF WELFARE

On December 11, 1967, Mr. and Mrs. Ramon Ruiz, appellants, of Ajo, Arizona, were denied general assistance payments by the Papago Indian Agency, Sells, on the grounds that appellants, though Papago Indians, did not reside on the Papago Indian Reservation. This was confirmed by letter from the agency to appellant Ramon Ruiz of December 13, 1967. The Departmental Manual makes it clear that assistance programs are not available for Indians living off an Indian reservation. 66 I.A.M. 3.1 (1965).

Appellants applied to Pima County Welfare for assistance in Ajo, Arizona during the week of November 21, 1967. On December 11, 1967, this denial of welfare was confirmed by a Mr. Berry, a social worker with the County Welfare Department in Ajo. (It should be noted that there is no program available in Arizona for general assistance where the father is unemployed. Such a program was begun and halted after only four families were eligible to apply. Informed sources tell me that the program was written in such a way as to exclude the Indians of Arizona.)

Appellants herewith appeal from the decision of the Papago Agency of the Bureau of Indian Affairs on the grounds that the denial of general assistance to them solely on the grounds that they live off the reservation is arbitrary, discriminatory, and a denial of due process of law.

This appeal is authorized by 66 I.A.M. 3.1.9 (1965).

I. Statutory Basis for Welfare Payments to Indians

The statutory basis for provision of financial assistance to Indians is found in the act of November 2, 1921, 42 Stat. 208, 25 USC 13 (1965), according to 66 I.A.M. Section 101.02 (1952).

This statute authorizes appropriations for the Bureau of Indian Affairs "for the benefit, care, and assistance of the Indians *throughout the United States*. . ." (Emphasis supplied.) Nowhere does this statute indicate a limitation of such assistance to Indians who reside on reservations.

II. Regulations of the Department of the Interior

The Code of Federal Regulations provides only for contracts between state and federal agencies for the provision of welfare. 25 C.F.R. Section 21 (1957).

The Departmental Manual, as stated above, makes it very clear that no assistance is to be provided for any Indians who happen to be residing anywhere off the reservation. 66 I.A.M. 3.1, 3.4 (1965).

The manual makes no provision for proximity to the reservation as a factor to be considered. Any Indian living over the boundary line is to be denied general assistance regardless of his being a part of the tribal society, economy, or community.

III. Basis for Challenge of this Decision

1. The regulations do not conform to the wishes of Congress. The statute cited above, 25 U.S.C. Section 13, declares that the money appropriated shall be for Indians "throughout the United States." There is no basis for adding the restriction "provided that said Indians reside on Indian reservations," which is what the regulations do in effect. The regulations are obviously at odds with the statute. The statute clearly means all Indians and no reference to legislative intent or legislative history is required. Webster's Seventh New Collegiate Dictionary, P. 921, defines *throughout* as "in or to every part: *everywhere*." Congress could easily have included the condition that the Indian reside on a reservation, but it did not.

Even if the statute could be said to be ambiguous, which it cannot, doubtful expressions in acts of Congress relating to Indians are to be resolved in favor of the Indians. *Carpenter v. Shaw*, 280 U.S. 363 (1930); *Squire v. Capoeman*, 351 U.S. 1 (1956).

2. To predicate eligibility on the basis of residence is a denial of due process and equal protection of the laws. A recent flurry of cases have struck down residency requirements for welfare based on time spent in the jurisdiction. *Harrell v. Tobriner*, 36 L.W. 2283 (U.S. D.C. Dist. Col., November 8, 1967); *Thompson v. Shapiro*, 270 F. Supp. 331 (1967); *Green v. Dept. of Public Welfare*, 270 F. Supp. 173 (1967); and *pendente lite* in *Smith v. Reynolds* (USDC E. Pa. 1967). The reasoning in these cases is applicable to the situation in this case.

If a six-month resident is denied the assistance given to one-year residents, in circumstances in which each is otherwise within the requirement of the statute, the former is denied the equal protection of the law, for the clearly different treatment has no reasonable relation to the basic legislative purposes. The disqualifying requirement applicable to plaintiffs thus engrafts upon the legislation an invalid provision. [36 L.W. at 2283.]

That the Bureau of Indian Affairs must exclude off-reservation Indians from welfare and other services for the sake of administrative convenience is plainly erroneous. There is no magic in the boundary line of a reservation. Reservations were established to provide the Indians with land, not to provide the Bureau of Indian Affairs a delimited jurisdiction. Other agencies, such as the Public Health Service and the various offices established under the auspices of the Office of Economic Opportunity, have not set up any residence requirements for the beneficiaries of their services.

Furthermore, in the instant case, appellants came to the office of Social Services in Sells, and no trip was necessary to see the appellants off the reservation. Even if it were necessary to visit appellants in Ajo, Arizona, this could be done very easily since Ajo lies on the direct route to another part of the Papago Reservation, Gila Bend.

In any case, to let the alleviation of poverty of an Indian hinge on the purely administrative convenience of the Bureau of Indian Affairs in Washington is arbitrary and capricious. One suspects that the real reason for the rule in question is to limit the expenses of the Department, which limitation is constitutionally impermissible for a state under *Edwards v. California*, 314 U.S. 160 (1941).

Harrell v. Tobriner, *supra*, relies also on another reason for striking down arbitrary residence requirements in welfare cases; this is the subtle impediment to the freedom of travel such requirements create. By cutting off all services for Indians at the border of the reservation, the Bureau of Indian Affairs discourages Indians from leaving the reservation to seek employment, or worse still, forces Indians settled in a community off the reservation to return to the adobe huts they left behind if they are to receive benefits. See the discussion of the freedom of travel in *Green v. Dept. of Public Welfare*, 270 F. Supp. 173 (1967).

Discriminatory legislation may be of such an arbitrary and injurious character as to violate the due process clause of the Fifth Amendment, *Detroit Bank v. United States*, 317 U.S. 329. It seems obvious that such discriminatory rule-making exists in this case and in all other like cases. Appellants should be granted general assistance payments and the regulations should be changed to permit off-reservation Indians to receive benefits equally with their counter-parts on reservations.

Finally, it should be noted that appellants have been effectively denied the right to representation by counsel in this proceeding by the admitted failure of the Bureau of Indian Affairs to provide counsel with a complete, current copy of the regulations covering welfare.

Subscribed this 28th day of December, 1967, by Roger C. Wolf, counsel for appellant.

/s/ Roger C. Wolf
ROGER C. WOLF
Papago Legal Services
Sells, Arizona 85634

Social Services
720

December 27, 1967

Mr. Ramon Ruiz
P.O. Box 849
Ajo Arizona 85321

Dear Mr. Ruiz:

This is to advise that Mr. Roger Wolf, Directing Attorney for Papago Legal Services, presented your appeal for general assistance on December 27, 1967.

The point in question is that your residence continues to be off-reservation in the city of Ajo, Arizon. The Bureau of Indian Affairs Welfare Manual states (66 IAM 3.1.1 and 66 IAM 3.1.4A) that "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

In view of the fact that your present residence is off-reservation we must deny your appeal. If you feel that this decision is unsatisfactory you have the right to appeal this decision to the Phoenix Area Office. If you decide to appeal this decision it will be necessary to do so in writing. The address is:

Area Director
Bureau of Indian Affairs
Phoenix Area Office
P.O. Box 7007
Phoenix, Arizona 85011

Because Mr. Roger Wolf is representing you in this matter we are sending a copy of this letter to his office.

Sincerely yours,

JOHN H. ARTICHOKER, JR.
Superintendent

cc: Mr. Roger Wolf
Papago Legal Services
Subject
Crono
Social Services: DKrahulec; EA: 12/27/67

Social Services
720

December 13, 1967

Mr. Ramon Ruiz
Box 849
Ajo Arizona 85321

Dear Mr. Ruiz:

We are writing in regard to the application you made for general assistance at the Social Services Branch in Sells on December 11, 1967.

We wish to inform you that your application has been disapproved as you do not meet one of the eligibility requirements. Under the regulations governing our general assistance program, "eligibility for general assistance is limited to Indians living on reservation." In view of the fact that you are living off the reservation, you do not meet this requirement.

If we may help in regard to further explanation, please feel free to contact our office at your convenience.

Sincerely yours,

EVERETT L. DOWNING
Social Service Representative

cc: Subject
Crono
Social Services: L Downing: bfa 12-13-67

WELFARE CASE RECORD

JURISDICTION PAPAGO

CASE NO. C-2084

IDENTIFYING INFORMATION

FAMILY NAME RUJZ

DATE 12-11-67

VARIAT: 24

DATE REVISED

ADDRESS P.O. Box 640, Ajo, Arizona 85321 (San Miguel & South Kome'le)

PERSONS IN HOUSEHOLD	SEX	BIRTH DATE	RELATIONSHIP TO HEAD	BLOOD DEGREE	EDUCATION	OCCUPATION	HEALTH
RAMON	M	8-16-09	HEAD	A/A	NONE	GRUSHER OPER.	GOOD
ANITA	F	8- -05	WIFE	"	3RD		
MARY ANN	F	6-8-53	DAUGHTER	"	8TH		

FA: PEDRO RUIZ

FA: JOSE ANHILL

TRISE: MAN PAPERCO CO: MARY ANN RULY

WOMAN PASADO No: JUANITA ANHILL
PA: JOSE ANHILL

FAMILY STATUS: S__UY__DIV.____WID.____SEP.____DES.

MAIDEN NAME ANHILL

PRESENT: MARRIAGE: DATE AND PLACE

KING · CHURCH

WIFE'S PREVIOUS MARRIAGES:

None

MUSKAT'S PREVIOUS MARRIAGES:

Now

MILITARY SERVICE NONE

[illegible]

AFFILIATION WITH CLUBS OR OTHER ORGANIZATIONS

WASH

CHILDREN AND RELATIVES NOT IN HOUSEHOLD

NAME	RELATIONSHIP	ADDRESS
MARGARET RUIZ THOMAS	DAUGHTER TO # 142	SELLER, ARIZONA
RAYON RUIZ, JR.	SON TO #142	CALIF. (SERVICE & LIVE-THRU)
PETE RUIZ	W N W	SAN DIEGO, CALIF. (SERVICE)

DATE OF RECEIPT IS RECEIVED, STATION NAME OF RECIPIENT.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ASSISTANCE

Jurisdiction Papago Date 12-11-67
 I, Ruize, Ramon + Anita
 (Last name) (First) (Middle)
Box 849, Ajo, Arizona
 (Address) (City) (State)

wish to apply for general assistance for 3 members of my household.

The source of our support in the past has been work at Phelps-Dodge mine

as crusher operator
 Our present income is Amount —0— per Source

I agree to supply all necessary information about my resources and income and to notify the agency when my situation changes. I also authorize the Bureau to obtain information necessary to establish my eligibility for assistance.

Anita Ruize
 (Signature of applicant)

Ramon Ruize

DISPOSITION OF APPLICATION

Date 12/13/67

Approved ☐ Amount of grant Disapproved ☒

Reasons:

Mr. + Mrs. Ruize live in reservation.

E. K. H. Young
 (Signature of case agent)

E. K. H. Young
 (Signature of member)
David Lewis
 (Title)



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408—Tucson

[Filed Jun. 7, 1968, Wm. H. Loveless, Clerk, United
States District Court for the District of Arizona,
By /s/ Louise Clelland, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

ANSWER

COMES NOW the defendant, by and through its attorney undersigned, and in answer to the plaintiffs' complaint admits, denies and alleges as follows:

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted against the defendant, Stewart L. Udall.

SECOND DEFENSE

I

Paragraph I contains conclusions of law which do not require an answer and which, therefore, are neither admitted nor denied.

II

Admits the allegations contained in Paragraphs II, IV and VI.

III

Denies the allegations contained in Paragraph III of plaintiffs' complaint and affirmatively alleges jurisdiction

and venue to entertain the class action as described in said paragraph does not lie.

IV

Admits the allegations contained in Paragraph V of the complaint that the plaintiffs reside at Ajo, Arizona, and that the mines in Ajo were closed in July, 1967; defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraph, and, therefore, denies the same; defendant alleges that the mines in Ajo are now open and have resumed operations.

V

Admits the allegations contained in Paragraph VII of the complaint concerning applications by the plaintiffs for general assistance benefits, the action taken thereon and the appeals filed by them; defendant denies that a final administrative decision was rendered by the Acting Area Director of the Phoenix Area Office or by any other officer, agent or employee of the defendant.

VI

Denies the allegations contained in Paragraphs VIII, XII, XIII and XIV of the complaint.

VII

Is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph IX of the complaint, and, therefore, denies said allegation.

VIII

Admits the existence of the statute authorizing expenditures for welfare payments to Indians pursuant to 25 U.S.C. § 13 (1965) as alleged in Paragraph X of the complaint; defendant denies the conclusion contained in the last sentence of said paragraph and alleges that the defendant does have authority to limit welfare payments

to Indians residing on Indian reservations, and further that such limitation is in accord with the intent of Congress.

IX

Paragraph XI contains conclusions of law which do not require answer, and which, therefore, are neither admitted nor denied.

AFFIRMATIVE DEFENSE

As an affirmative defense, defendant alleges the plaintiffs have failed to exhaust their administrative remedies prior to the institution of this action, pursuant to 25 C.F.R. 2.5.

WHEREFORE, it is respectfully urged that the relief sought by the plaintiffs be denied in all respects and that their complaint be dismissed with costs awarded to the defendant.

EDWARD E. DAVIS
United States Attorney

/s/ Morton Sitver
Assistant United States
Attorney

Copy of the foregoing mailed this 7th day of June, 1968 to:

Mr. Roger C. Wolf
Papago Legal Services Program
P. O. Box 246
Sells, Arizona 85634
Attorney for plaintiffs

/s/ Morton Sitver
MORTON SITVER
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408—Tucson

[Filed Nov. 29, 1968, Wm. H. Loveless, Clerk, United
States District Court for the District of Arizona,
By /s/ Louise Clelland, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

AGREED STATEMENT OF FACTS

It is hereby mutually agreed by the parties of this action that the following statement of fact shall be all of the facts upon which the Court shall render judgment, subject to any legal objection considered by the Court and subject to any affidavits submitted in support of a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure, or otherwise submitted and accepted by the Court:

1. Plaintiffs, Ramon Ruiz and Anita Ruiz, are citizens of the United States.
2. Plaintiffs are American Indians.
3. Plaintiffs are members of the Papago Tribe of Arizona, speak and understand the Papago language and speak and understand only a limited amount of English.
4. Plaintiffs reside with their minor daughter at Ajo, Arizona, in a community of Indians commonly known as "the Indian Village".
5. The Indian Village is populated almost entirely by Papago Indians.
6. Practically all the land and most of the homes in the Indian Village are owned by the Phelps-Dodge Company, and rented by the Company.
7. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that plaintiffs left the Papago Indian

Reservation in 1940 in order to seek employment at the mines in Ajo, Arizona, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

8. These mines are operated by the Phelps-Dodge Company.

9. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona that plaintiff has lived in Ajo, Arizona and worked in these mines continuously since 1940 and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

10. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona that plaintiff has lived in his present residence in Ajo, Arizona continuously since 1947 and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

11. The mines where plaintiff, Ramon Ruiz, is employed were closed by a strike on July 19, 1967, and remained closed by that strike until March 20, 1968.

12. Defendant, Stewart L. Udall, is the Secretary of the Interior.

13. Defendant has his office in the District of Columbia.

14. Acting under 25 U.S.C. § 13 (1964), 42 Stat. 208 (1921), and delegations of authority, defendant has delegated to the Commissioner of Indian Affairs the authority to set forth guide lines pertaining to the eligibility of Indians for general assistance welfare payments.

15. Acting by virtue of such delegated authority, the Commissioner of Indian Affairs has promulgated the statement contained in 66 I.A.M. 3.1.4 which states "[e]ligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

16. Plaintiffs applied for general assistance benefits from the Bureau of Indian Affairs on December 11, 1967.

17. Plaintiffs were denied benefits and notified by letter dated December 13, 1967.

18. Plaintiffs appealed to the Superintendent of the Papago Indian Agency and were denied benefits on December 27, 1967.

19. Plaintiffs appealed to the Phoenix Area Director of the Bureau of Indian Affairs and a hearing was held in Ajo, Arizona on January 23, 1968.

20. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that at the time of this hearing plaintiff, Ramon Ruiz, was supporting his wife and minor daughter. In addition, he was giving financial aid to his two older sons and to his married daughter, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

21. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that at the time of this hearing and throughout the entire time the strike was in progress, plaintiff's sole income was a \$15 per week striker's benefit paid by the union and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

22. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that at the time of the hearing plaintiff was in debt for a sum in excess of \$1,500, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

23. The residence requirement stated in 66 I.A.M. 3.1.4 bars the plaintiffs from eligibility for general assistance benefits from the Bureau of Indian Affairs.

24. An administrative decision denying general assistance benefits to plaintiffs was rendered January 25, 1968 by the Acting Area Director of the Phoenix Area Office of the Bureau of Indian Affairs.

25. The sole ground of this denial was that plaintiffs resided outside the boundaries of the Papago Reservation.

26. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that plaintiff sought welfare assistance from the State of Arizona on November 20, 1967 at Ajo, Arizona, and the defendant has no knowledge relative to

this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

27. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona that plaintiffs were denied welfare assistance from the State because State assistance is not available to striking union members, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts, as shown by the attached affidavit of Ever L. Hanson, County Welfare Director, Pima County.

It is hereby mutually agreed by and between the above-mentioned parties that no prior pleadings in this action, neither the complaint with attachment nor the answer, shall be deemed to be rendered null and void by the Agreed Statement of Facts, except those which are in direct contradiction to those facts, which are agreed upon herein.

The Court is hereby requested by the above-mentioned parties to render any judgments as may be proper on the facts herein.

Dated: November 26, 1968.

EDWARD E. DAVIS
United States Attorney

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States Attorney
Attorneys for the defendant

/s/ Roger C. Wolf
Attorney for the plaintiffs

STATE OF ARIZONA
DEPARTMENT OF PUBLIC WELFARE
PIMA COUNTY

EVER L. HANSON
County Director
151 West Congress
Tucson, Arizona 85701

[Received Nov. 12, 1968]

November 8, 1968

Mr. Roger C. Wolf
Papago Office of Economic Opportunity
Legal Services Program
Sells, Arizona

Dear Mr. Wolf:

Re: Mr. Ramon Ruiz

This is in reply to your letter of October 29, 1968, regarding State of Arizona Public Welfare benefits available to Mr. Ramon Ruiz during the mine strike.

During the strike period, striking miners with Union membership, receiving strikers' benefits, were not eligible for either General Assistance or Emergency Relief from the Department of Public Welfare. However, striking miners were eligible to draw Surplus Commodities under the Department of Public Welfare Surplus Commodities Distribution Program, provided the eligibility requirements for this program were met.

The records of the Pima County Welfare Office show that Mr. Ramon Ruiz applied for Surplus Commodities on November 20, 1967 and was certified as eligible to receive Surplus Commodities for a ninety-day period, and

on February 9, 1968, was recertified to receive Surplus
Commodities for another ninety-day period.

Very truly yours,

/s/ Ever L. Hanson
EVER L. HANSON
County Welfare Director

ELH:gb .

State of Arizona County of Pima

On this 8th day of November 1968, personally appeared
before me Ever L. Hanson, known to me to be the person
who executed the foregoing for the purpose contained
therein;

/s/ Marcia Eatinger
Notary Public

My Commission expires 7-6-1969

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408—Tucson

[Filed Nov. 27, 1968, Wm. H. Loveless, Clerk, United
States District Court for the District of Arizona,
By /s/ Catherine A. Dougherty, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

MOTION FOR SUMMARY JUDGMENT

COMES NOW the defendant, Stewart L. Udall, by and
through his attorneys, pursuant to Rule 56, Federal
Rules of Civil Procedure, and moves the Court for sum-
mary judgment in his favor, there being no genuine
issue as to any material fact and the defendant being
entitled to judgment as a matter of law.

EDWARD E. DAVIS
United States Attorney

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States
Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408—Tucson

RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

DEFENDANT'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

The pleadings on file herein clearly establish the propriety of granting summary judgment in favor of the defendant in this case.

The plaintiffs, members of the Papago Indian Tribe, made application for financial assistance pursuant to 25 U.S.C. 13. Their application indicated they were not residents of the reservation and the application was denied in accordance with the governing regulations contained in 66 Indian Affairs Manual, 3.4A, the pertinent portions of which are attached hereto.

Under the provisions of the Snyder Act, 42 Stat. 208 (1921), 25 U.S.C. 13 (1964), the Bureau of Indian Affairs under the supervision of the Secretary of the Interior is to direct, supervise and expend monies for the benefit, care and assistance of the Indians throughout the United States for certain specified purposes. These specified purposes include general support. Implementing the Snyder Act, *supra*, Congress has, with a great degree of regularity since 1922, passed legislation appropriating funds. See, e.g., 42 Stat. 565 (1922); 42 Stat. 1186 (1923).

Congressional authority was given to the Secretary to delegate these powers to the Commissioner of Indian Affairs (60 Stat. 939 (1946), 25 U.S.C. 1a (1964)). It is, in fact, the Commissioner of Indian Affairs who has management of all Indian affairs and of all matters arising out of Indian relations involving Indian wards under the jurisdiction of the Department of the Interior

(4 Stat. 564 (1832), 15 Stat. 228 (1868), 25 U.S.C. 2 (1964)). Acting in accordance with the authority given him by Congress, the Secretary of the Interior delegated his functions under the Snyder Act, *supra*, to the Commissioner of Indian Affairs (230 Department of the Interior Manual 2.1). Empowered with these delegated authorities, the Commissioner of Indian Affairs has promulgated certain rules and regulations compiled in the Indian Affairs Manual. Volume VI, Community Services, Part 6, Welfare, Chapter 3, General Assistance and Social Services, sets forth these rules and regulations with reference to the Snyder Act, *supra*. In pertinent part, these rules and regulations provide:

Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

While other conditions prerequisite to an individual's ability to obtain assistance are stated, the *sine quo non* of residence is sufficient to estop the plaintiffs from obtaining general aid.

The Secretary and, *a fortiori*, the Commissioner, does not have unlimited power but is subject to legislative restrictions. See, e.g., *United States v. Arenas*, 158 F.2d 730, 9th Cir. (1946); cert. den. 331 U.S. 842. The appropriations acts implementing the Snyder Act provide that appropriate funds are to be utilized for the "support and civilization of Indians under the jurisdiction of the following agencies, to be paid from the funds held by the United States in trust for the respective tribes . . ." (emphasis added) [Here follows a list of Bureau of Indian Affairs' agency offices in Arizona.] 42 Stat. 565 (1922). To the same effect are subsequent appropriations acts. The Commissioner, acting under his delegated authority, interpreted the language of the Snyder Act, together with its implementing appropriations acts, as limiting eligibility for general assistance to Indians living on reservations. In Arizona the only Indians under the general jurisdiction of Bureau of Indian Affairs agencies reside on reservations. As stated in *Udall v. Tallsman*, 380 U.S. 1, at page 16:

When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. "To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." *Unemployment Comm'n v. Aragon*, 329 U.S. 143, 153. See also, e.g., *Gray v. Powell*, 314 U.S. 402; *Universal Battery Co. v. United States*, 281 U.S. 580, 583. "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" *Power Reactor Co. v. Electricians*, 367 U.S. 396, 408.

At page 17:

The Secretary's interpretation had, long prior to respondent's applications, been a matter of public record and discussion. * * *

At page 18:

In *McLaren v. Fleischer*, 256 U.S. 477, 480-481, it was held:

"In the practical administration of the act the officers of the land department have adopted and given effect to the latter view. They adopted it before the present controversy arose or was thought of, and, except for a departure soon reconsidered and corrected, they have adhered to and followed it ever since. Many outstanding titles are based upon it and much can be said in support of it. If not, the only reasonable construction of the act, it is at least an admissible one. It therefore comes within the rule that the practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of

executing it is entitled to great respect and, if acted upon for a number of years, will not be disturbed except for cogent reasons."

Several bills have been introduced before Congress to extend the Bureau's welfare program to off-reservation Indians. The latest of these were H.R. 9621, 87th Cong., 2d Sess., and H.R. 6279, 88th Cong., 1st Sess. These attempts to have the Bureau's welfare program extended to non-reservation Indians were unsuccessful. It is clear that Congress knows of and approves the limitation of the Bureau's welfare program to Indians residing on reservations under its jurisdiction. Congress could also have made provision, which it did not, specifically to include off-reservation Indians in any of several appropriations acts providing for the expenditure of monies under the Snyder Act, *supra*.

The fairness of the Congressional limitations clearly espoused in the acts of Congress are not a matter for judicial determination. The law and correspondingly the authority of the Secretary and of the Commissioner is limited to providing welfare assistance to Indians residing on a reservation.

It is submitted, therefore,:

1. The Snyder Act, *supra*, and the implementing appropriations acts by their terms limit assistance to Indians residing on reservations under the jurisdiction of the Bureau of Indian Affairs;

2. In any event, implementing regulations promulgated by the Commissioner of Indian Affairs spelled out this limitation which has been affirmed by Congress in its failure to extend coverage of the act to non-reservation Indians when requested so to do.

Respectfully submitted,

EDWARD E. DAVIS
United States Attorney

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States
Attorney

Copy hereof mailed this 27th
day of November, 1968 to:

Roger C. Wolf, Esquire
Papago Legal Services
The Papago Tribe
Papago Office of Economic Opportunity
Legal Services Program
P. O. Box 246
Sells, Arizona 85634

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States Attorney

WELFARE

66 IAM 3.1

3 GENERAL ASSISTANCE AND SOCIAL SERVICES

3.1 *General Assistance*

- .1 *Purpose.* The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.
- .2 *Authority.* The Snyder Act of November 2, 1921 (25 U.S.C. 13) provides that the Bureau shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of Indians throughout the United States. The annual appropriation for the Department of Interior includes funds for welfare services to Indian children and adults in need of assistance.
- .3 *General Policy.* Individuals and families who may require general assistance, whether on short or long term basis, are expected to use resources and employment actually available to them in meeting basic living needs. When resources are unavailable, or are insufficient, and assistance from other public sources is not available, then general assistance will be furnished to meet unmet living needs or to supplement available resources to the extent that unmet needs may be met.

In furnishing general assistance to needy Indian families and persons the Bureau's interest encompasses both the meeting of unmet needs when income and resources are insufficient, and helping them, whenever possible, to make positive and constructive use of all resources available to them so as to foster self-help and independence. The involvement and responsibility

of the families and persons in connection with plans for use of resources and other plans for personal development or rehabilitation should be emphasized.

4 Eligibility Conditions.

- A. *Residence.* Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.
- B. *Unavailability of Public Assistance or General Assistance from a State or Local Jurisdiction.* Individuals receiving public assistance in their own right, or whose needs are included in a public assistance payment are not eligible for Bureau general assistance.

Indians for whom general assistance is actually available from a State, county or local public jurisdiction are not eligible for general assistance from the Bureau.

General assistance may be provided to meet need for an interim period for an individual or family, who may be eligible for public assistance pending an application for and a determination of eligibility and receipt of the first public assistance check. Each applicant for general assistance, individual or family, considered as potentially eligible for public assistance will be advised to make an application at the first reasonably available opportunity and, if necessary, may be assisted to apply.

When it appears that a needy Indian or family is eligible for public assistance and has made a reasonable effort to comply with the public assistance requirements, but the local public assistance agency has not afforded adequate and proper consideration in accepting

the application or in making a prompt and proper determination of eligibility and decision, general assistance may be continued. In such instances the Branch of Welfare shall ascertain the facts, and if necessary, assist the person in presenting his claim for public assistance to the local agency or, if advisable, assist him in making a written appeal to the State Agency for a fair hearing.

When there is evidence that a local or State public assistance agency consistently fails or refuses to assure Indians their legal rights to apply for and to receive public assistance, if eligible, or otherwise shows evidence of discriminatory practices toward Indian applicants for public assistance in violation of the Social Security Act the Agency Social Worker shall submit a documented report of such case situations to the Area Office.

* * *

totals ending in 50¢ or more will be used. State standards and procedures for maximum grants and percentage limitation are not to be applied.

Payments shall be made at regular periods. This may be monthly, on or about the first of the month, or when in the judgment of the social worker the recipient will be best served through receipt of general assistance payments in smaller amounts, the payments may be made semimonthly or weekly in amounts adjusted from the total monthly budget deficit to cover the specified periods.

Persons who are determined eligible on a date after the first of the month shall receive payment in an amount to cover the remainder of the month. In emergency situations a supplementary voucher may be submitted to meet immediate and pressing need.

General assistance payments shall be made by check payable to the recipient (payee) and addressed to him, except that general assistance checks may be made payable to a third party for the recipient when after investigation it is determined that he is mentally incapable of managing his own affairs and the third party has assumed responsibility for providing his care and maintenance. Payments to a third party should have the approval of the superintendent and the justification for the arrangement shall be stated in the case record.

General assistance checks shall not be addressed in care of another person unless the recipient has furnished a signed written request for such action. The signed request for such mailing must be retained in his case record.

Imprest funds may be used to meet an emergency need. Purchase orders for subsistence needs may be used to prevent hardship, or to meet an emergency when a delay in payment by check would cause hardship or suffering.

- .9 *Appeals.* When a person expresses dissatisfaction with a decision concerning his eligibility or payment the social worker will review with him the facts upon which the decision was based to ascertain the validity of the facts and the decision. If an error was made or if new or additional evidence justifies a modification or adjustment of the decision in line with established policy, appropriate adjustment will be made.

If after such a review the person is not satisfied with the agency decision he shall have the right to make an appeal to the superintendent. If he appeals to the superintendent the record of the facts or information upon which the deci-

sion or possible adjustment was based shall be submitted to the superintendent. If the individual continues to be dissatisfied after the superintendent has heard his appeal and has rendered a decision, the superintendent shall advise him of his right to make an appeal in writing to the Area Office. When a written appeal is made to the Area Office the superintendent will request the Area Office to conduct a review at the agency. The findings of the review and the decision of the Area Director shall be transmitted to the individual through the superintendent. Thereafter changes in eligibility and the amount of payment will be contingent upon changes in the case situation.

- .10 *Reviews of Eligibility and Service Needs.* Planned reviews of their case situations should be made with individuals and families receiving assistance to evaluate: (a) any changes in their living circumstances and household composition, (b) need for continued assistance and necessary adjustments in payments, (c) result of services given and need for additional services which can be furnished by the Branch of Welfare, or obtained through referral through other sources. Eligibility shall be reviewed whenever there is indication or likelihood of a change in circumstances, or when an individual or family asks for a reconsideration of need. Likewise, consideration will be given to requests for service whenever such requests are made. Otherwise, a review of eligibility shall be made not less often than once in each six-month period.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408—Tuc

[Filed, June 5, 1969, 3:15 p.m., Wm. H. Loveless, Clerk,
United States District Court for the District of Arizona,
By /s/ Catherine A. Dougherty, Deputy Clerk]

RAMON and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

CROSS MOTION FOR SUMMARY JUDGMENT

Defendant having previously moved for summary judgment, plaintiffs, Ramon and Anita Ruiz, in response now move the court for summary judgment in their favor pursuant to Rule 56, Federal Rules of Civil Procedure, based upon the agreed statement of facts, the supporting affidavits and exhibits on file with the court and the memorandum filed in support of this motion.

Respectfully submitted,

/s/ Roger C. Wolf
ROGER C. WOLF
Attorney for the Plaintiffs
Papago Legal Services
Sells, Arizona

/s/ Winton D. Woods, Jr.
WINTON D. WOODS, JR.
Associate Counsel
Papago Legal Services
Sells, Arizona

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

AFFIDAVIT OF SERVICE

I, ROGER C. WOLF, being duly sworn, declare that I have on this date served a copy of this motion and the memorandum in support thereof on the defendant herein, through his authorized representative, by depositing a copy of the petition and memorandum in the United States mails, postage prepaid, addressed to Richard S. Allemann, Assistant United States Attorney, 5000 Federal Building, Phoenix, Arizona 85025.

/s/ Roger C. Wolf
Affiant

Subscribed and sworn to before me this 5th day of June, 1969, by ROGER C. WOLF.

Notary Public

My Commission Expires:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Civ-2408 Tuc.

[Filed Jun. 5, 1969, 3:15 p.m., Wm. H. Loveless, Clerk,
United States District Court for the District of Arizona,
By /s/ Catherine A. Dougherty, Deputy Clerk]

RAMON and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
CROSS-MOTION FOR SUMMARY JUDGMENT

ROGER C. WOLF
Papago Legal Services
Sells, Arizona

WINTON D. WOODS, JR.
Associate Counsel
Papago Legal Services
Sells, Arizona

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EXHIBITS

- A. Affidavit of Larry R. Stucki
- B. Affidavit of Elee R. Sam
- C. Affidavit of Ever L. Hanson
- D. H.R. 9621, 87th Cong., 2nd Sess., January 11, 1962
- E. H.R. 6279, 88th Cong., 1st Sess., May 14, 1963
- F. Introduction to the Indian Affairs Manual

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408—Tuc

RAMON and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
CROSS-MOTION FOR SUMMARY JUDGMENT

FACTS

The factual basis for this motion for summary judgment is contained in the Agreed Statement of Facts and the Affidavits attached to this Memorandum as Exhibits. This Court may take judicial notice of matters of legislative fact contained in the affidavits. See: *McCormick, Evidence* (1954) § 329.

SUMMARY OF ARGUMENT

Neither the plain meaning nor the legislative history of the statute indicates that Congress intended to authorize the exclusion of Indians such as the Plaintiffs. Under accepted standards of statutory construction any doubt should be resolved in Plaintiffs' favor. If, however, the Court finds that the regulation in question is proper under the statute it is nonetheless unconstitutional because as applied to Plaintiffs: 1) it irrationally discriminates against Plaintiffs, and 2) it infringes upon Plaintiffs' constitutional right to freedom of movement without compelling justification in a situation where less drastic means are available to effectuate the governmental purposes.

DEFENDANT'S REGULATION 66 I.A.M. 3.1.4 IS
IN CONFLICT WITH THE CONGRESSIONAL
MANDATE IN 28 U.S.C. § 13.

The first question presented in this case is simply this: Can the Department of the Interior maintain a program of general assistance for needy, employable Indians in such a way that only Indians who live on a reservation are eligible for that assistance? It should be kept in mind that the general assistance program is in no way designed to take the place of existing state welfare programs, but is intended to sustain Indians where there is no state program. If the Court rules that off-reservation Indians should not be excluded from the program, it will not mean that the federal government will be forced to take over a responsibility of the state. The State of Arizona has no general assistance program for *employable* people [ARS § 46-233(A)(4) makes this clear], and is under no compulsion to establish such a program.

The main argument in Defendant's memorandum is that the 66 Indian Affairs Manual limitation of Bureau welfare to reservation Indians is a long-standing, contemporaneous interpretation of the authorizing statute (25 U.S.C. § 13) and is an interpretation impliedly sanctioned by Congress.

This argument is simply mistaken. First, the Defendant does not show that the residence restriction is contemporaneous or long-standing. The welfare materials in the Indian Affairs Manual (I.A.M.) bear the date 1965, and Defendant has not shown that prior regulations, if any, contained the same restriction. Since the program of cash assistance did not begin until 1944, the residence restriction in question could not have begun prior to then, and therefore it can hardly be contemporaneous with the 1921 Snyder Act authorizing appropriations (42 Stat. 208, 25 U.S.C. § 13). The Defendant's memorandum (page 3) relies on a 1922 appropriation act implementing the Snyder Act for the language

in the appropriation act giving funds for Indians "under the jurisdiction of" various Indian agencies. Nowhere does Defendant attempt to show what the jurisdiction of an Indian agency is. Apparently we are to assume that an Indian Agency, such as the Papago Agency, is somehow constitutionally unable to give away money to needy Indians beyond the geographic boundaries of its "jurisdiction" and that Congress would not have used the word "jurisdiction" except to agree to this premise. This is an unwarranted and unsubstantiated assumption. Such concepts of jurisdiction do not prohibit the granting of student loans to Indians who reside *near*, but not necessarily on, Indian reservations. [25 C.F.R. § 32.1 (1968)]. Nor did it deter the Commissioner of the Bureau of Indian Affairs, Robert L. Bennett, from the following language in his written statement to a Congressional committee:

We are a modern service bureau, serving as many as 400,000 Indians and Alaska Natives *who live on or near reservations*—people who find themselves isolated from the mainstream of American life—existing in poverty. [Emphasis supplied]. [Hearings on H.R. 17354 Before a Subcommittee of the Senate Committee on Appropriations, 90th Cong., 2nd Sess., Pt. 1, at 368 (1968)].

Defendant relies upon *Udall v. Tallman*, 380 U.S. 1, (1965). That case includes the following language:

The Secretary's interpretation had, long prior to respondents' applications, been a matter of public record and discussion [380 U.S. at 17].

But Defendant does not offer any indication that the I.A.M. materials dealing with welfare, let alone the specific prohibition in § 3.1.4 on residency, was a matter of public record and discussion. It is common knowledge that welfare regulations are hard to obtain, CCH *Poverty Law Reporter*, ¶ 1035 (1968), and the I.A.M. is no exception. It is almost preposterous to assume that Congress, or anyone else for that matter, is or has been for

any length of time aware that the BIA denies welfare to Indians who reside off reservations.

The "regulations" on BIA welfare appear in the Indian Affairs Manual, rather than in the more readily available Code of Federal Regulations. This is contrary to the Bureau's own policy as stated in its 1968 introduction to the Indian Affairs Manual, O BIAM 1.2 (1968), [see Exhibit "F"]. "Eligibility Qualifications" are to be published in the Code of Federal Regulations. Since they have not been so published, the Bureau cannot now impute to Congress knowledge of and acquiescence to their content. Furthermore, the welfare regulations apparently did not appear in the Federal Register as required by 5 U.S.C. § 552 (a) (1), and therefore Plaintiffs cannot be "adversely affected by" the requirement of residence on a reservation.

Defendant's memorandum cites the introduction of two bills before Congress to show that Congress knows of the residency limitation in question. According to Defendant's memorandum (page 4), the bills were "to extend the Bureau's welfare program to off-reservation Indians." This is not the case. The bills [H.R. 6279, 88th Cong., 1st Sess.; H.R. 9621, 87th Cong., 2d Sess.] (Exhibits D & E), are substantially the same and were introduced by the same Congressman (Berry). Their primary purpose was to provide the same sort of formula of federal matching funds for Indian categorical assistance grants (in the six states enumerated) under the Social Security Act as is provided for Navajos and Hopis under the Navajo-Hopi Rehabilitation Act, 25 USCA § 639. Section 2 of each bill apparently provided for an expansion of services under the Snyder Act to Indians in the specified states who reside outside reservations, but it included services in addition to welfare, namely education, medical assistance, and agricultural assistance, and it appears that the extension of services contemplated was limited not only to the six enumerated states (Arizona not being included), but was also limited to those states of the six which are party to a contract with the BIA under 25 USC § 452.

Thus the bills were not an attempt to have the Bureau's welfare program extended to non-reservation Indians, nor is it clear that Congress "knows of and approves the limitations" here in question. Even if the bills did clearly indicate knowledge of the residency limitation, it is not clear that the failure of these bills to pass indicates Congressional "approval" of the limitation. The bills were probably rejected for any of several more compelling reasons, such as the desire to have the states continue to pay their share of categorical assistance, or the desire to avoid favoring certain states over the rest with regard to various Indian matters.

Until the advent of legal aid programs on Indian reservation in the mid-1960's, it was unlikely that the administrative regulation in question would be challenged by an Indian welfare recipient. Thus the fact that the administrative construction of the statute has not been challenged until this case does not require the Court to pay deference to the administrative construction of the statute. The circumstances surrounding administrative construction of statutes are relevant. *Leary v. United States*, — U.S. —, 37 LW 4397, 4402 (1969).

The Defendant's argument presupposes that the Snyder Act allows for interpretation with regard to which Indians are to be eligible for monies thereunder. Our position is that the Secretary of the Interior is initiating, contrary to the plain meaning of the statute, a policy matter. This is forbidden and should not be enforced by the Court. *Arenas v. United States*, 322 U.S. 419, 432 (1943).

The plain meaning of the statute is the best indication of what Congress intended. *United States v. American Trucking Association*, 310 U.S. 534, 543 (1940). The language of the statute allows expenditure of funds for the benefit, care and assistance of the Indians throughout the United States. *Throughout* means in every part, not just in some specified areas. See *Jarvis Towing and Transp. Corp. v. Aetna Ins. Co.*, 82 NE 2d 577, 578, 298 NY 280 (1948). Thus the purpose of the statute is to assist Indians in every part of the United States. The statute does not purport to assist Indians only so long

as they reside on Indian reservations. If the statute is not ambiguous, even a long-standing departmental construction of its language is not binding on the courts. *Swift Co. v. U.S.*, 105 U.S. 691, 695 (1881). Furthermore, the regulations restricting benefits to Indians on reservations do not relate to the obvious purpose of the statute, are therefore unauthorized and should not be enforced by the Court. *Trust of Bingham v. Commissioner*, 325 U.S. 365, 377 (1944); *Manhattan General Equipment Co. v. Commissioner of Internal Revenue*, 297 U.S. 129, 134 (1936).

The Secretary of the Interior cannot initiate policy matters, by regulations or otherwise, contrary to the statute in question. *Arenas v. United States*, 322 U.S. 419, 432 (1943). He cannot legislate through his regulations. *Helvering v. Sabine Trans. Co.*, 318 U.S. 306, 311-12 (1942). Regulations implementing a statute must be reasonable as well as consistent with the statute. *Manhattan General, supra*, 297 U.S. at 135.

The legislative history of 25 USC § 13 is at best unclear as the material contained in Appendix A will show. But if the statute is unclear the ambiguity should be resolved in favor of the Indians. The Supreme Court of the United States has been careful to prevent legislative ambiguities from working to the detriment of the Indians. *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 98 (1918); *United States v. Oregon Short Line R. Co.*, 113 F.2d 212, 214 (1940). In a more recent case, in construing the General Allotment Act of 1887, Mr. Justice Warren noted: "Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection with good faith." *Squire v. Capoeman*, 351 U.S. 1, 6-7 (1956).

Given the important constitutional questions involved in this case, the Court should be reluctant to infer from the act in question that the Secretary has discretion to exclude whole classes of Indians from these benefits. In *Kent v. Dulles* 357 U.S. 116, 128, 130 (1957), the Court through Justice Douglas held that where Congress gave no explicit authorization to the Secretary of State to deny passports on political grounds, the statute would not be

construed as giving the Secretary of State that power. This holding was in spite of the fact the "the issuance of passports is 'a discretionary act' on the part of the Secretary of State." 357 U.S. at 124. The discretionary power of the defendant is also limited.

II

DEFENDANT'S REGULATION 66 I.A.M. 3.1.4 DENIES PLAINTIFFS EQUAL PROTECTION OF LAW AND THUS VIOLATES PLAINTIFFS' RIGHTS UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Although the extent to which the requirement of equal protection of law operates against the federal government under the Fifth Amendment is unclear [see *Bolling v. Sharpe*, 347 U.S. 497 (1954)], it is obvious that the claims set forth in this case are within the requirement. *Shapiro v. Thompson*, — U.S. —, 89 S. Ct. 1323 (1969). In *Shapiro*, Mr. Justice Harlan in his dissenting opinion summarized the present state of the law, which extends the test of equal protection beyond the mere rational classification test:

In upholding the equal protection argument, the Court has applied an equal protection doctrine of relatively recent vintage: the rule that statutory classifications which either are based upon certain "suspect" criteria or affect "fundamental rights" will be held to deny equal protection unless justified by "compelling" governmental interest. 89 S.Ct. at 1344.

The classification in issue in this case, i.e., "nonreservation Indians", is violative of both the traditional rational classification standard and the more stringent "compelling governmental interest" standard articulated in *Shapiro*.

In *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886), the United States Supreme Court noted that: "... equal protection of the law is a pledge of the protection of equal laws." When a state or the federal government treats

classes of persons differently, such differences in classification are valid only if they are reasonable in light of a legitimate legislative purpose.

In the case at bar we are faced with two classes of persons: Papago Indians residing on a reservation, and Papago Indians residing off the reservation. The reasonableness of such a classification may be tested, under the equal protection clause, by comparing: (1) the necessity for the discrimination [i.e., the importance to the government of such diverse treatment]; (2) relevant differences in the situations of those treated unequally; and (3) the impact of the discrimination upon individual rights and other human values. Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 Calif.L.R. 567, 610 (1966); cf., *Shapiro v. Thompson*, *supra*.

(1) *The Necessity for the Discrimination*

The legislative history of the enabling statute in question is scant, at best. [See Appendix "A".] As for the regulation, little can be gleaned about its underlying intent. The information available, however, clearly indicates that no legitimate purpose would be served by providing for such diverse treatment among these two classes of Papago Indians.

As is shown in Appendix "A", the mood of Congress at the time the enabling legislation was passed, was one of liberality toward the Indian. Congress wanted to emancipate the Indian by providing him with aid and education. Absorption of the Indian into American society was strongly urged. Emphasis was placed on getting the Indian off the reservation—not confining him to its territorial boundaries. In light of this, it is obvious that the regulation in question could not have as its purpose the confinement of Papago Indians to the territorial boundaries of their reservation.

The evident primary purpose, and undoubtedly the major one, is to limit the number of Indians who may receive benefits. Since a good many members of the Papago Tribe do not live on the reservation (see, e.g., Exhibit "B") the economics of the discrimination are

evident. But as the Supreme Court pointed out in *Shapiro*, mere economy cannot justify an unconstitutional discrimination. And, in *Oyama v. California*, 332 U.S. 633, 646-47 (1948), the Court made it clear that disparate treatment may not be justified because of some remote administrative benefit to the state. In other words, the rights of a class of persons may not be unduly infringed when a less restrictive statute (or regulation) that requires greater administrative effort can satisfy the same needs of the state. See also *Harman v. Forssenius*, 380 U.S. 528, 542-43 (1965); *Carrington v. Rash*, 380 U.S. 89, 96 (1965).

Plaintiffs do not argue that the government must grant benefits to all Indians no matter what their status might be. It is certainly arguable, for example, that an Indian who has achieved social and economic independence in Anglo society might be treated differently from those who are still tied to the life and culture of the reservation. Accepting, *arguendo*, the propriety of a regulation that would deny benefits to an out-of-work New York attorney who happens to be an Indian [but cf. Martin, *Adjustment Among American Indians in an Urban Environment*, 23 Human Organizations 290 (1964)], it is nonetheless apparent that less drastic means are available to promote that policy. The doctrine of less drastic means received its most recent recognition by the Supreme Court in *Shapiro v. Thompson*, *supra.*, and its application to this case is discussed below in Part IV.

(2) *Relevant Differences Between Classes*

In the case at bar, Plaintiffs are distinguishable from the other members of the tribe only because they live some ten miles from the legal boundary of the Papago Reservation. They are, as the agreed statement of facts indicates, by language, culture and birth pure Papago Indians. (And see Exhibit "A" herein). The question for decision is therefore whether a Papago Indian living in Indian Village in Ajo can constitutionally be deprived of benefits given to those members of the tribe who reside on the reservation ten miles away (cf. Exhibit "B").

At the outset it should be noted that the Plaintiffs live within the historic boundaries of Papago County or "Papagueria":

Eastern capital was enlisted; several companies were formed; mills and furnaces were put in operation; and for some six years, in the face of great obstacles—notably that of expensive transportation—the southern mines were worked with considerably success and brilliant prospects, until interrupted by the war of the rebellion, the withdrawal of troops, and the triumph of the Apaches in 1861. The mining properties were then plundered and destroyed, many miners were killed, and work was entirely suspended, not to be profitably resumed in this region for many years. During this period *the Ajo copper mines in Papagueria* were also worked with some success; and on the lower Gila from 1858 gold placers, or dry washings, attracted a thousand miners or more, being somewhat profitably worked for four years, and never entirely abandoned. *Bancroft's History of Arizona and New Mexico 1530-1888*, Horn & Wallace (1962) at page 579 [emphasis added].

As the Indian Claims Commission recently found:

25. *Boundaries of the Papago Land.* The Commission finds that at the date of American accession in 1854 and subsequently until taken from them, the Papago Tribe of Arizona exclusively occupied and used in Indian fashion, and hence had aboriginal title to the tract bounded and described as follows:

Commencing at a point on the International Boundary in the Tinajas Altas Mountains which divides the eastern and western drainage of those mountains (T13S and R17W Gila and Salt River Meridian); thence Northwest on a line down the crest of the Tinajas and Gila Mountains to the 3141 foot peak on the border of the Yuma land as found in Docket No. 319; thence East to the Mohawk Mountains peak of 2900 feet in T10S R13 Gila and Salt River Meridian; thence Northwest along the crest of the Mohawk

Mountains to Mohawk Pass; thence East to the present town of Gila Bend; thence East Southeast on a line through Lost Horse Tank to the peak of Table Top Mountains in T8S R2E, thence East to the northwest corner of the Papago Indian Reservation in R3E; thence East along the northern border of that reservation to its northwest corner in T7S; thence on a line East-Southeasterly to Picacho Peak and to Red Rock, Arizona; thence East to the peak of Oracle; thence in a southerly direction on a line following the ridge dividing the waters which flow into the San Pedro River from the waters which flow into the Santa Cruz River to the International Boundary Line; thence West and Northwest along the International Boundary Line to the point of beginning.

The following areas are excluded to the extent not taken by the Defendant:

- a. The San Xavier del Bac Reservation;
- b. The Papago Indian Reservation as enlarged by the post-1917 additions enumerated in Finding No. 24;
- c. Confirmed Spanish and Mexican land grants.

The Papago Tribe of Arizona v. The United States of America, No. 345, Indian Claims Commission (Interlocutory Order of September 10, 1968), p. 422.

Plaintiffs are, in terms of the Papago culture, indistinguishable from all other Papagos who have not left "Papaguera". It would not be improper for this Court to hold on that ground alone that distinctions based on different places of residence within Papaguera cannot withstand constitutional scrutiny. Certainly the government would not argue that benefits could be paid only to those Papagos who reside at Sells, the capital of the Tribe.

Of more significance, however, is the fact that Plaintiffs are not emancipated Papago living in an Anglo environment: 1) Indian Village is just what its name implies; and 2) the Plaintiffs are Papagos who speak only their native language. To classify such persons solely

on the ground that they do not live on a reservation is plainly irrational, as a reading of Exhibit A demonstrates.

(3) *The Impact of the Discrimination*

The impact of the discrimination is evident in this case. Plaintiffs, who were not eligible for state welfare benefits during the copper strike, were without financial support for their family. To compare them to Anglos and English or Spanish-speaking Papagos who felt the impact of the strike is not impressive since those classes of people possess a social mobility unattainable by Plaintiffs. The effect upon Plaintiffs' general welfare is evident and the infringements of their constitutionally protected rights will be demonstrated below.

III

DEFENDANT'S CLASSIFICATION AFFECTS PLAINTIFFS' FUNDAMENTAL RIGHTS AND ACCORDINGLY REQUIRES A SHOWING OF COMPELLING GOVERNMENTAL INTEREST.

The case at bar is facially distinguishable from *Shapiro, supra*, on two grounds: 1) Plaintiffs did not move into the state; and 2) there is no "durational" requirement involved in this case. Both of those distinctions are irrelevant to the disposition of this case.

As was noted above, *Shapiro* requires the government to show a compelling justification for a classification that places a burden upon the exercise of a fundamental right. Plaintiffs have exercised their constitutional right to travel from a former residence to a new one, and because they have done so, they are classified, so far as BIA general assistance is concerned, as non-reservation Indians who are not entitled to benefits. In order to support such a classification the Defendant must show a compelling justification that is not readily apparent. This is not a case where the Plaintiffs have moved out of the Defendant's jurisdiction, as would be so if state-

to-state travel were involved.* Indeed, the statutory authorization gives jurisdiction to Indians throughout the United States. See Argument I, *supra*. But in addition to penalizing Plaintiffs' prior movement, the challenged regulation constitutes an even more onerous present burden. The right to travel necessarily implies the right to remain where one has made his home. Yet the plain urging of the regulation is to move Indians such as Plaintiffs back to the reservation in order to obtain benefits from the BIA. The burden upon the right to travel thus created is subtle but nonetheless real.

IV

LESS DRASTIC MEANS ARE AVAILABLE TO PROMOTE THE OBJECTIVES OF THE CHALLENGED REGULATION.

In *Shapiro v. Thompson*, *supra*, the Supreme Court rejected the appellants' contention that the one-year residence requirement served to protect against fraud:

Similarly, there is no need for a State to use the one-year waiting period as a safeguard against fraudulent receipt of benefits; for *less drastic means* are available, and are employed to minimize that hazard. 89 S.Ct. at 1333 [emphasis added].

The doctrine of "less drastic means" has been the subject of recent scholarly comment. See: Note, *Less Drastic Means and the First Amendment*, 78 Yale L.J. 464 (1969); Struve, *The Less-Restrictive-Alternative Prin-*

* The mere fact that Plaintiffs are involved in movement within the state would not seem to serve to distinguish the case from the interstate movement cases. The right is freedom of movement, not interstate movement; although the decided cases have involved interstate or international travel, the language used would preclude distinctions based on *where* a person seeks to go. See, e.g., *Kent v. Dulles*, 357 U.S. 116 (1958); *Schachtman v. Dulles*, 225 F.2d 938 (1955); Chaffee, *Three Human Rights in the Constitution of 1787*, (1956) pp. 171-191. In *Shapiro*, the Court declined to rest the right to travel upon a particular clause of the Constitution but affirmed nonetheless its continuing vitality. See 89 S.Ct. at 1329.

ciple and Economic Due Process, 80 Harvard L.R. 1463 (1967); Wormuth & Merkin, *The Doctrine of the Reasonable Alternative*, 9 Utah L.R. 254 (1964), and has been applied by the Supreme Court in a number of cases dealing with fundamental rights prior to *Shapiro*. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479, 485, 497-498, 503-504 (1965); *Aptheker v. Secretary of State*, 378 U.S. 500, 507-508 (1964); *Sherbert v. Verner*, 374 U.S. 398, 406-409 (1963); *Shelton v. Tucker*, 364 U.S. 479, 487-490. The doctrine has recently been summarized in the following language:

[L]anguage appearing in non-first amendment decisions has stood for the doctrine that the government, when it has available a variety of equally effective means to a given end, *must choose the measure which least interferes with individual liberties*. 78 Yale L.J., *supra*, at 464 [emphasis added].

Less drastic means are available to effectuate the interest of the government in preventing unnecessary welfare expenditures. The Plaintiffs do not argue that the government is constitutionally compelled to extend benefits to any citizen of Indian ancestry, no matter how emancipated he may be, simply because he is an Indian. However, to seek to promote that objective by automatically excluding all Indians who do not live on an established reservation must necessarily, as it does in this case, bring within the prohibition many Indians who are in no way distinguishable from their brothers on the reservation. By language, culture, and economic condition, Plaintiffs are members of the Papago community and are certainly distinguishable from the emancipated Indian that the government may reasonably seek to exclude. For example, 42 CFR 36.12 provides a reasonable alternative means of determination:

[Health services are available] to persons of Indian descent belonging to the Indian community served by the local facilities and program . . . an individual [is] within the scope [of the program] . . . if he is regarded as an Indian by the community in which he lives as evidenced by such factors as tribal mem-

bership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with the general Bureau of Indian Affairs' practices in the jurisdiction.*

Less drastic means which do not infringe upon Plaintiffs' fundamental right to move through their historic land are available to protect the legitimate interests of the government. In accordance with the above-cited cases, the Defendant should be required to utilize them.

V

CONCLUSION

Respectfully submitted,

/s/ Roger C. Wolf
ROGER C. WOLF
Papago Legal Services
Sells, Arizona

/s/ Winton D. Woods, Jr.
WINTON D. WOODS, JR.
Associate Counsel
Papago Legal Services
Sells, Arizona

* It is perhaps worthy of note that Plaintiff Ruiz appears to meet the requirements of this section.

APPENDIX A

The legislative history of the Snyder Act, Title 25 U.S.C. § 13, 42 Stat. 208, indicates only the concern of Congress toward the American Indian. The following comments are illustrative:

1. H.R. Rep. No. 275, 67th Congress, 1st Sess. 2:

This is a bill to make in order appropriations for bureaus that have been added to the Indian Service since the bureau was inaugurated in 1838, which have thus become integral parts of the service, nearly all of which have been appropriated for from year to year and which will continue, in all probability, as long as the bureau exists. Therefore the committee has deemed it wise to present a bill which will make in order these appropriations which have hitherto been subject to a point of order.

2. 61 *Congressional Record* 4659-4660 (remarks of Mr. Kelly):

I am opposed to legislating on the point-of-order principle, where one man can prevent action by an entire body, and therefore I shall not oppose this measure. *I sincerely hope, however, that it will give us the opportunity to get down to the fundamentals of our Indian system and inspire us to constructive remedies for an intolerable situation.*

3. *Ibid.* at 4660-4661:

The shame of broken Government promises of the distant past is overshadowed by the deliberate and long-continued effort to hold these Indians in chains against the express will of the lawmaking body. Mr. Chairman, the Indian Bureau has multiplied its activities, its employees, and its expenditures many fold in 30 years and has actually presented a solution of the problem. *It has held to all the Indians under its care and has reached out for others who had been self-supporting and living free from its restrictions.* Once corralled by the bureau, it has been an

almost impossible task for an Indian to break loose from a system which, by its very nature, degenerated, degraded, and destroyed. The Indians have been kept prisoners on reservations, under arbitrary control and without personal and property rights.

4. *Ibid.* at 4662:

Now, we have been hothousing the Indians for a century, and there never was a normal Indian who could not have been made into a competent, self-supporting individual in the 21 years required to make a competent citizen of a child born to any American parents. But the average Indian is not self-supporting, and as long as the present system continues he cannot become self-supporting. His opportunities are bounded by the reservation and there is no chance for his development. His chances to make money are in the hands of agents and officials who thrive upon a system which depends upon his being a non-supporting, incompetent individual.

5. *Ibid.* at 4663:

The bureau depends upon the retention of these Indians in the position of helpless wards, huddled together on reservations, and therefore every effort is made to hold to the system. The Indians are encouraged to remain on the reservation. If any are educated elsewhere, they are encouraged to return. They are taught that their homes, their property, and their future prosperity lie within the confines of the reservation. If a young Indian marries, his reservation-born child has a place on the tribal rolls and a share in the funds locked up in the Treasury. If his child is born outside the reservation, it loses any claim to a share in the pot at the end of the bureau rainbow. There are many inducements held out.

6. *Ibid.* at 4670 (remarks of Mr. Hill):

The census of 1910 showed an Indian population of 304,950. These Indians mostly live on Government reservations, which Secretary of the Interior Lane

aptly designated as "little more than expanded and perhaps somewhat idealized orphan asylums".

7. Other comments are to be found at 61 *Congressional Record* at 4664 (Mr. Kelly), 4670 (Mr. Hill), 4673 (Mr. Burton).

EXHIBIT A**AFFIDAVIT OF LARRY R. STUCKI**

**IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA****No. Civil 2408—Tuc.****RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS****vs.****STEWART L. UDALL, Secretary of the Interior, DEFENDANT****AFFIDAVIT**

I have been asked by Papago Legal Services to prepare a statement concerning the nature of the off-reservation Papagos in Arizona in general and the Indian population of Ajo, Arizona, in particular.

My background in Indian matters is as follows: In 1965 I received my M.A. degree in anthropology from U.C.L.A. and then went to the University of Colorado where in 1967 I completed my course work for the Ph. D. degree in anthropology and passed the required comprehensive examination. During the summer of that year I served as Field Director for the demographic and socio-cultural census conducted by the Public Health Service, Health Program System Center, on the Papago reservation. I supervised the Indian field interviewers in the districts of Pisinemo and Gu Vo. That fall I began my own field work, studying the Indian community in Ajo, Arizona, while at the same time extending the census work for the U.S. Public Health Service into the same community. After a nine month stay in Ajo, in the summer of 1968 I again returned to the main reservation

but this time I served as Field Director for the remaining portion of the off-reservation Papago census in the towns and farm areas north and east of the Sells reservation. In mid-September, 1968, I returned to the University of Colorado, where I am now completing my doctoral dissertation on the subject of the off-reservation Papagos. I am also currently a teaching assistant in anthropology at the University of Colorado and I am a consultant to a comprehensive health planning training program in Denver.

During all of this time I became intimately acquainted with many of the off-reservation Papagos and learned much about the problems they face in a social environment that has never really accepted them as permanent members. The example of Ajo vividly illustrates this dilemma.

Ajo's Indian population is composed of several different tribes but the vast majority of the Indians there are Papagos. The Papagos in Ajo can be divided into two categories: (1) those who either left the reservation during their lifetime or are sons and daughters of reservation-born parents, and (2) those whose ancestors in historic times never lived on what is now the reservation. This latter group is largely composed of Mexican Papagos, including decedents of the so-called "Sand" Papagos, many of whom have white as well as Indian ancestry. The Sand Papagos occupied much of the land west of Ajo prior to the arrival of the white man in the region.

The first modern study of this Indian community was begun by Jack O'Brien Waddell in 1963 as a major subdivision of his work for his Ph. D. dissertation. Completed in 1966, it was entitled "Adaptation of Papago Workers to Off-Reservation Occupations." At that time, the Phelps Dodge Corporation, which still maintains rather strict control over many aspects of life in Ajo, had begun to take the first steps toward breaking down the very rigid racial segregation that over the years had been maintained in company housing. However, as Waddell (1966:148) points out, "there has been a tendency for the segregated ethnic communities to selectively main-

tain their ethnic identifications." I found this to be true in 1968 as well.

This physical separation is only indicative of the greater social separation that exists between most members of the Papago community and the other ethnic groups living in Ajo. During the many interviews I obtained in Ajo's "Indian Village," very few Papago Indians considered Ajo to be their real home and almost all wished to return to the reservation upon retirement from the mine. Many members of the village viewed living in Ajo as a necessary but temporary evil tolerated only for the purpose of earning money. There was also a lack of cohesiveness among members of the village in spite of the creation of a somewhat artificial inter-tribal council backed by the company. This was the observation of Waddell (1966:377-378):

During the periodic shutdowns, most Papagos in the Indian Village return to their various kinship villages on the reservation; or reservation relatives frequently come to visit in Ajo. The vital kinship links are still largely in terms of kinship villages, not the Ajo village.

In my interviews I discovered that many of the Papagos still maintain and frequently visit homes on the reservation. Many still have cattle there and some even farm there. During the summer many wives and children spend long periods of time living on the reservation. Many of the miners attend reservation dances and other ceremonies, driving to the reservation after work ends in the afternoon and returning early the next morning to Ajo. Some miners still vote in district elections on the reservation and many seek medical care there. Through the years many of the miners who have either been fired or laid off have returned to the reservation. Thus even some of the most "acculturated" Ajo Indians still maintain very close ties to the reservation. (In my forthcoming dissertation I will be attempting to quantify the above statements.)

During the prolonged strike of the copper miners these ties were frequently strengthened and even extended.

During this time of crisis, the members of the Indian Community often used the reservation as a place of refuge and occasionally as a source of food, money, and medical care.

On March 7, 1968, I was able to interview Ramon Ruiz, his wife, and Ramon Ruiz, Jr., about the effects of the strike on their family. (This interview was in the regular course of my work and long before I heard of this law suit.) With his son acting as interpreter, he told me that the whole family returned to South Komelik during the whole month of August, 1967, and that they had returned to South Komelik once or twice a month during the remainder of the strike, staying in Ajo only because one child, Mary Ann, was still attending school there.

Ramon Ruiz informed me that he still maintained his home in South Komelik and that he planned to return there in 4 years when he retires. He had never thought of Ajo as being his real home. His poor command of the English language, in spite of having lived in Ajo for 28 years, tended to confirm this. His son did much of the talking and interpreted for his father frequently. Subsequent to this interview, I learned that when the Ruiz' other son was killed in military service in Viet Nam, funeral services were held by the family in the church in Sells.

In summary, Ramon Ruiz, and most of the other Papagos in Ajo except the "Sand" Papagos, view themselves as being only temporary residents of Ajo. They think of themselves as being permanent residents of the reservation and permanent members of the Papago Tribe. Many of them participate actively in some reservation programs in spite of the difficulties work at the mine presents. Most desire strengthened ties to the reservation and a chance to participate more fully in reservation programs which are often denied them because of their off-reservation residence. Only a small minority seek complete integration into the dominant off-reservation complex. The siren song of the reservation, in most cases, prevents the complete severance of the umbilical cord to the homeland of these people.

STATE OF COLORADO)
) ss.
 COUNTY OF BOULDER)

On the 27th day of November, 1968, before me, Carol Fernandez, a notary public by law authorized to administer oaths and affirmations, personally appeared LARRY R. STUCKI, and being by me first duly sworn, deposes and says that he is the author of the above affidavit, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

/s/ Larry R. Stucki
 LARRY R. STUCKI

SUBSCRIBED AND SWORN to before me this 27th day of November, 1968.

/s/ Carol Fernandez

Notary public in and for the County of Boulder, state of Colorado, and by law authorized to administer oaths and affirmations. My commission expires the — day of —, 1968.

My Commission expires September 15, 1971

EXHIBIT B**AFFIDAVIT OF ELEE R. SAM**

**IN THE
DISTRICT COURT OF THE UNITED STATES****No. Civil 2408—Tuc.****RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS****vs.****WALTER J. HICKEL, Secretary of the Interior, DEFENDANT****AFFIDAVIT**

My name is Elee R. Sam. I am a Papago Indian and I have resided at the Gila Bend Indian Reservation since 1959. From August, 1967 until February, 1968, I was the community development worker for the Papago community at the Gila Bend reservation. As a community development worker (a paid employee of the Papago Office of Economic Opportunity, a program funded under the War on Poverty) I became very familiar with the economic and social problems of the Gila Bend Papago Indians. In February of 1968, I was elected to the position of Vice-Chairman of the Papago Tribe, but I have maintained my residence at the Gila Bend reservation. I was re-elected Vice-Chairman in February of 1969.

On December 25, 1966, twenty-four Papago Indian families from the Gila Bend reservation village of Sil Murk moved from that village to a new housing development, now called the San Lucy community, one quarter of a mile north of the town of Gila Bend. The San Lucy community is located on land that was previously private, non-reservation land, but by act of Congress, and in consideration for the building of the Painted Rock Dam on

the Gila Bend reservation, new land was set aside for the housing development for the community. The community of San Lucy is now legally a part of the Gila Bend reservation. Only those families who owned a house at Sil Murk were entitled to receive a new house at the San Lucy village. Consequently many families who stayed with friends or relatives at Sil Murk village were not given a house at San Lucy village and were forced to move off the reservation because of the lack of other suitable housing or locations for housing. Most of the Papago families left out of the San Lucy village moved to the town of Gila Bend proper. There were approximately nineteen families thus forced to move to Gila Bend. Some of them joined other Papago families who had lived in the town of Gila Bend for some time in a rural slum on the wrong side of the railroad tracks known as the Indian Village. The Indian Village in Gila Bend now has about eight Papago families. They struggle to survive in shacks without any indoor plumbing and they must haul their own water from a faucet at the Southern Pacific railroad depot. Only one or two houses at the Indian Village have electricity. The 24 houses at San Lucy village have all modern utilities. Bureau of Indian Affairs general assistance or Tribal Work Experience Program (TWEP) welfare grants have been available only to those residing at the San Lucy village, since this is the only inhabited part of the reservation. This is in spite of the extreme poverty and lack of employment for Papagos in the Gila Bend vicinity, many of whom do not speak English. About one dozen Papago individuals or families have sought to build adobe houses on the San Lucy land, in order to rejoin the Papago community and to take advantage of Bureau welfare assistance. The Bureau of Indian Affairs, however, has discouraged and effectively prevented this on the grounds that it would conflict with plans for future housing projects at the San Lucy village. As a result, about eleven Papago families have moved into houses at San Lucy to share the houses with friends or relatives. This of course has resulted in crowding but it has been the only way for these people to obtain financial assistance either

through general assistance or through the Tribal Work Experience Program jobs.

Three years ago Mr. Dewey Ortega, the representative to the Tribal Council from the Gila Bend district, and I, began urging the Bureau of Indian Affairs to recognize the Indian village in Gila Bend as a Papago village so that residents of the Indian village could obtain BIA general assistance or TWEP jobs. Our efforts have met with no success.

The denial of welfare benefits to Papagos who used to live in the old Sil Murk village, and to Papagos in general who did not have the good luck to get a house at San Lucy, has caused a good deal of friction between the Papagos at San Lucy and the Papagos in Gila Bend proper. Not only were the Gila Bend Papagos denied a house, they are also denied subsistence benefits from BIA welfare. So the lucky ones have modern, comfortable houses, a sense of community, and welfare assistance when they need it, while those left out of San Lucy are denied everything.

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On the 4 day of June, 1969, before me, Matilda S. Juan, a notary public by law authorized to administer oaths and affirmations, personally appeared ELEE R. SAM, and being by me first duly sworn, deposes and says that he is the author of the above affidavit, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

/s/ Elee R. Sam
ELEE R. SAM

SUBSCRIBED AND SWORN to before me this 4 day of June, 1969.

/s/ Matilda S. Juan
My Commission expires
Apr. 23, 1972

EXHIBIT C

AFFIDAVIT OF EVER L. HANSON

STATE OF ARIZONA

DEPARTMENT OF PUBLIC WELFARE

PIMA COUNTY

EVER L. HANSON
County Director
151 West Congress
Tucson, Arizona 85701

[Received Nov. 12, 1968]

November 8, 1968

Mr. Roger C. Wolf
Papago Office of Economic Opportunity
Legal Services Program
Sells, Arizona

Dear Mr. Wolf:

Re: Mr. Ramon Ruiz

This is in reply to your letter of October 29, 1968, regarding State of Arizona Public Welfare benefits available to Mr. Ramon Ruiz during the mine strike.

During the strike period, striking miners with Union membership, receiving strikers' benefits, were not eligible for either General Assistance or Emergency Relief from the Department of Public Welfare. However, striking miners were eligible to draw Surplus Commodities under the Department of Public Welfare Surplus Commodities Distribution Program, provided the eligibility requirements for this program were met.

The records of the Pima County Welfare Office show that Mr. Ramon Ruiz applied for Surplus Commodities on November 20, 1967 and was certified as eligible to receive Surplus Commodities for a ninety-day period, and on February 9, 1968, was recertified to receive Surplus Commodities for another ninety-day period.

Very truly yours,

/s/ Ever L. Hanson
EVER L. HANSON
County Welfare Director

ELH:gb

State of Arizona County of Pima

On this 8th day of November 1968, personally appeared before me Ever L. Hanson, known to me to be the person who executed the foregoing for the purpose contained therein.

/s/ Marcia Eatinger
Notary Public

My Commission expires 7-6-1969

EXHIBIT D

H.R. 9621, 87TH CONG., 2ND SESS.

JANUARY 11, 1962

H.R. 9621, 87th CONGRESS, 2d SESSION

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 1962

MR. BERRY introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To provide (1) that the United States shall pay the actual cost of certain services contracted for Indians in the States of Minnesota, North Dakota, South Dakota, and Wisconsin; and (2) for a more equitable apportionment between such States and the Federal Government of the cost of providing aid and assistance under the Social Security Act to Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", approved April 16, 1934, as amended (25 U.S.C., sec. 452), is amended by inserting "(a)" immediately after "That" and by adding at the end thereof the following new subsection:

"(b) Whenever, under authority of subsection (a) of this section, a contract is entered into with the State of Minnesota, the State of North Dakota, the State of South Dakota, or the State of Wisconsin, or with any political subdivision of any such State, or with any State corporation, agency, or institution of such a State, such contract shall provide that the United States shall pay the actual cost, including administrative costs, of the service to be furnished or performed by the State, political subdivision, corporation, agency, or institution under such contract."

SEC. 2. In carrying out the Act entitled "An Act authorizing appropriations and expenditures for the administration of Indian Affairs, and for other purposes", approved November 2, 1921 (25 U.S.C. 13), every person domiciled in the State of Minnesota, the State of North Dakota, the State of South Dakota, or the State of Wisconsin who is a full-blooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is one-fourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose shall be held and considered to be an enrolled Indian for the purposes of providing education, medical assistance, agricultural assistance and social welfare aid, including relief of distress. On or before July 1, 1957, the Bureau of Indian Affairs shall submit to the agencies of such States with which it contracts for the provision of education, medical assistance, agricultural assistance and social welfare aid (including relief of distress) to Indians a register of all persons in each such State who were, on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

SEC. 3. Beginning with the quarter commencing on July 1, 1957, the Secretary of the Treasury shall pay, for each quarter, to the State of Minnesota, the State of North Dakota, the State of South Dakota, and the State

of Wisconsin (from sums made available for making payments to the States under sections 3(a), 403(a), 1003(a), and 1403(a) of the Social Security Act) an amount, in addition to the amounts prescribed to be paid to each such State under such sections (computed and paid at the same time and in the same manner as are the amounts payable under such sections), equal to 80 per centum or (a) the total amounts of contributions by each such State toward expenditures during such quarter by such State, under the State plans approved under the Social Security Act for old-age assistance, aid to dependent children, aid to the blind, and aid to the permanently and totally disabled, to every person who is a full-blooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is one-fourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose, with respect to whom payments are made to such State by the United States under sections 3(a), 403(a), 1003(a), and 1403(a), of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections, and (b) that portion of the total amounts the Secretary of Health, Education, and Welfare has found to have been necessary for such State to expend during such quarter for the proper and efficient administration of such State plans, which is attributable to the administration of such State plans with respect to such Indians. On or before July 1, 1957, the Bureau of Indian Affairs shall submit to the State agencies responsible for the administration of such State plans in each of such States a register of all persons in such State who were, on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

EXHIBIT E

H.R. 6279, 88TH CONG., 1ST SESS.

MAY 14, 1963

H.R. 6279, 88th CONGRESS, 1st SESSION

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1963

MR. BERRY introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To provide (1) that the United States shall pay the actual cost of certain services contracted for Indians in the States of Minnesota, North Dakota, South Dakota, Washington, Idaho, and Wisconsin; and (2) for a more equitable apportionment between such States and the Federal Government of the cost of providing aid and assistance under the Social Security Act to Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", approved April 16, 1934, as amended (25 U.S.C. 452), is amended by inserting

"(a)" immediately after "That" and by adding at the end thereof the following new subsection:

"(b) Whenever, under authority of subsection (a) of this section, a contract is entered into with the State of Minnesota, the State of North Dakota, the State of South Dakota, the State of Washington, the State of Idaho, or the State of Wisconsin, or with any political subdivision of any such State, or with any State corporation, agency, or institution of such a State, such contract shall provide that the United States shall pay the actual cost, including administrative costs, of the service to be furnished or performed by the State, political subdivision, corporation, agency, or institution under such contract."

SEC. 2. In carrying out the Act entitled "An Act authorizing appropriations and expenditures for the administration of Indian affairs, and for other purposes", approved November 2, 1921 (25 U.S.C. 13), every person domiciled in the State of Minnesota, the State of North Dakota, the State of South Dakota, the State of Washington, the State of Idaho, or the State of Wisconsin who is a fullblooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is one-fourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose shall be held and considered to be an enrolled Indian for the purposes of providing education, medical assistance, agricultural assistance, and social welfare aid, including relief of distress. On or before July 1, 1963, the Bureau of Indian Affairs shall submit to the agencies of such States with which it contracts for the provision of education, medical assistance, agricultural assistance, and social welfare aid (including relief of distress) to Indians a register of all persons in each such State who were, on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

SEC. 3. Beginning with the quarter commencing on July 1, 1963, the Secretary of the Treasury shall pay quarterly to the State of Minnesota, the State of North Dakota, the State of South Dakota, the State of Washington, the State of Idaho, and the State of Wisconsin (from sums made available for making payments to the States under sections 3(a), 403(a), and 1003(a) of the Social Security Act) an amount, in addition to the amounts prescribed to be paid to each such State under such sections, equal to 80 per centum of the total amounts of contributions by each such State toward expenditures during the preceding quarter by such State, under the State plans approved under the Social Security Act for old-age assistance, aid to families with dependent children, and aid to the needy blind, to every person who is a full-blooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is one-fourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose, with respect to whom payments are made to such State by the United States under sections 3(a), 403(a), and 1003(a), respectively, of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections. On or before July 1, 1963, the Bureau of Indian Affairs shall submit to the State agencies responsible for the administration of such State plans in each of such States a register of all persons in such State who were, on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

EXHIBIT F

INTRODUCTION TO THE INDIAN AFFAIRS MANUAL

BUREAU OF INDIAN AFFAIRS MANUAL

O BIAM 1.1

INTRODUCTION

Bureau Manual System

1.1 *Purpose*: The Bureau Manual System is the prescribed medium for publication of all policies, procedures, and instructions and selected other information which have general and continuing applicability to Bureau of Indian Affairs activities. The primary objectives of the system is to communicate instructions effectively.

1.2 *System Description*: The Bureau directives system consists of two major components, Chapter I, Title 25, of the Code of Federal Regulations and Bureau of Indian Affairs Manual.

Code of Federal Regulations: Directives which relate to the public, including Indians, are published in the Federal Register and codified in 25 Code of Federal Regulations (25 CFR). These directives inform the public of privileges and benefits available; eligibility qualifications, requirements and procedures; and of appeal rights and procedures. They are published in accordance with rules and regulations issued by the Director of the Federal Register and the Administrative Procedures Act as amended. Assistance in complying with the requirements of this Act is available from the Branch of Management Research. Instructions and guidance on the preparation of directives published in the Federal Register and codified in 25 CFR are contained in Part 303 of the Departmental Manual and the handbook supplement to the Part entitled "How to Prepare Federal Register Documents", in the Federal Register Handbook on Document Drafting, and in 33 BIAM 5.

Bureau of Indian Affairs Manual: Policies, procedures, and instructions which do not relate to the public but are required to govern the operations of the Bureau are published in the Bureau of Indian Affairs Manual (BIAM). Issuance of BIAM material in two forms (basic and supplemental) is authorized to facilitate creation, distribution and use of the manual.

The *basic manual* is intended to include the Bureau organization description, all delegations of authority from the Commissioner, and the general policies and procedures for each Bureau program. When used in conjunction with the CFR, it provides line and staff officers who have general management responsibilities with the basic information required for the performance of their job. When used in conjunction with the supplements, it provides program and administrative technicians the basic policy and procedural information required in the performance of their jobs.

O-1 Jun. 10, 1968

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 2408-TUCSON (J.A.W.)

[Filed Oct. 15, 1969, Wm. H. Loveless, Clerk, United
States District Court for the District of Arizona,
By /s/ Louise Clelland, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS

vs.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

DEFENDANT'S SECOND MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

The defendant, as in its first memorandum, feels that the pleadings on file herein clearly establish the propriety of granting summary judgment in favor of the defendant in this case.

The entire argument in this cause centers upon the interpretation of the Snyder Act, 42 Stat. 208 (1921), 25 U.S.C. 13 (1964). Plaintiffs contend that the interpretation by the Bureau of Indian Affairs, as contained in 66 IAM 3.4A, is not justified and that such is in direct

conflict with the clear wording of the statute. The arguments presented in the original memorandum by both parties discussed at length the regulations promulgated under the Act and their effect. This memorandum will address itself to: First, the limited purpose of the Snyder Act, and second, the practice of the Bureau of Indian Affairs both prior to and after the passage of this Act.

The Snyder Act

The provisions of the Act are rather simple and provide that the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend monies as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for certain specified purposes. Included in the specified purposes is that of general support which is the subject of this action. Plaintiffs contend that the statute is clear and that they fall within its provisions despite the fact that they reside off the reservation. Plaintiffs further contend that even if the statute is not clear, then the rules of statutory construction would operate in their favor. It is defendant's contention that a true understanding of the single purpose of the Snyder Act based upon an examination of its legislative history eliminates the necessity to apply any other rules of statutory construction. Plaintiffs urge that the legislative history of the Act is, at best unclear. Nothing could be further from the truth as the copies of the Congressional records of the Committee of the Whole House, identified and attached as Exhibit A, clearly show. Pertinent parts of the statements contained therein shall be discussed below.

Appropriations that run ahead of authorization could be struck down by a point of order and this had been done in previous Indian appropriation bills.

The record shows that the Snyder Act was only an authorizing act which was passed to avoid the point of order rule then in use by the House of Representatives. This can be illustrated by the comments of Representative Kelly, who was an opponent to then-existing Indian policy, which appear at pages 4659-4660:

Mr. Chairman and gentlemen of the Committee, this measure simply makes in order the items *which have been carried for many years in the Indian appropriation bills*. I helped to take a number of these items out of the last Indian Bill through *points of order*, but it was the most futile effort possible, for they were reinserted in the Senate and in the end nothing was accomplished. *I am opposed to legislating on the point-of-order principle, where one man can prevent action by the entire body*, and therefore I shall not oppose this measure. (Emphasis added)

and the statement of Representative Carter at pages 461-462:

Mr. Chairman and gentleman (sic) of the Committee, in view of the turn that this debate has taken and the distance it has drifted afield, it might be well enough to call attention of gentlemen to what this bill really does. This bill does not undertake the enlargement or creation of a single activity which is not now in operation by the Indian Bureau. *It simply provides for making certain appropriations in order for activities which have been carried along from year to year by appropriations of money for that year without any specific authorization of the work. . . .* But the difficulty is that no general authorization has been made for many of the Indian Bureau agencies. Like Topsy, 'they just grewed.' An epidemic would break out on some certain reservation and without objection an item would be inserted in the current appropriation bill for its suppression and control. Next, certain Indians would be found wanting to farm but without necessary farming implements and stock, so an industrial item would be inserted and no point of order raised against that. Thus the system grew up, and these different agencies were established by the simple insertion of an appropriation in the annual appropriation act without the passage of any organic act authorizing them.

These appropriations were carried along from year to year as long as the Indian Committee had jurisdiction of appropriations without much friction. But when all appropriations were concentrated in the Committee on Appropriations then the fun began. Before this change the Indian Committee had both legislative and appropriating jurisdiction, and when that committee brought in these unauthorized items, points of order were rarely insisted upon because no committee jurisdiction was transgressed and no other committee felt sufficiently aggrieved to kick up the row. When appropriation jurisdiction was taken away from the Indian Committee and the Appropriation Committee brought in their bill carrying those unauthorized propositions that constituted a clear invasion of committee jurisdiction, the Indian Committee rebelled and its membership . . . raised considerable fuss. . . .

At Page 4672:

Mr. Andrews. Will this bill do anything more than to prevent points of order on the Indian appropriation bill?

Mr. Carter. Absolutely nothing else. It does not start a single additional agency in the Bureau of Indian Affairs, it does not enlarge their activities, and does not create any new activities. It does nothing more than protect the committee reporting the bill against the whims and peevishness of some Member attacking the bill."

At Page 4684:

Mr. Dowell. Then, as I understand the gentleman, this bill does not authorize anything not already included in the Indian appropriation act.

Mr. Snyder. It does not authorize the Bureau to do a single additional thing.

Mr. Dowell. It does not authorize anything that is not appropriated for under the present law.

Mr. Snyder. Absolutely not. It only includes those things that have become integral parts of the service.

The statements made by, then Representative Carl Hayden of Arizona certainly crystallize the matter. On Page 4680 he said:

Mr. Chairman, I stated at the beginning of the session today that I reluctantly supported the bill that we now have before us for consideration. Frankness compels me to say that I was not favorably impressed with the measure the first time I read it. It then seemed to me that its purpose was to allow the Committee on Indian Affairs to appear, make its bow, and thereafter disappear from the legislative scene of action by thus abdicating all of its authority in favor of the Committee on Appropriations. I have examined the terms of the bill in the meantime and find that the grant of power to the Appropriations Committee is carefully guarded. *What it actually amounts to is to authorize by law the making of the usual annual appropriations to carry on the work of the Indian Service, and nothing more.* (Emphasis added)

There can be no question but that the Act was only a legislative vehicle to circumvent a burdensome parliamentary procedure. There was no need to use other than the general language of the Act "of the Indians throughout the United States." There was no need to be specific since the bill wasn't to change or add any services of the Bureau that existed at that time. When Congress spoke of Indians it meant reservation Indians. Look to Page 4679 where Representative Hayden said:

Mr. Chairman, I cannot by silence give approval to attacks upon the Indian Service by those who never saw an *Indian reservation* and who base their charges either upon half truths or anticipated information. (Emphasis added)

and at Page 4680:

Since the Indian Bureau must be retained we should make it as efficient as possible, having always in mind that its ultimate object is not to perpetuate itself but to gradually decrease its activities as the Indians cease to be wards of the Government. Within the bureau there should be a greater recognition of the fact that in many instances the interests of the Indians and their white neighbors are identical and that only by proper cooperation can both races enjoy the fullest measure of prosperity. Since the Indian is free to travel over the white man's roads, he should do his fair share of road building on the *reservations*. Where there is more land within a *reservation* than is needed for farming and grazing allotments, the surplus should be surveyed and sold to white people who are seeking homes. All of the mineral resources of every *reservation* should be opened to development under a proper leasing system to the mutual advantage of the Indians and those interested in mining. These are some examples of what must be accomplished if the orderly development of the Western States where the Indians reside is not to be unduly retarded. (Emphasis added)

Other references by various members of the House to reservations throughout the debate can leave little doubt that the Indian under discussion was the reservation Indian.

Bureau Policies

As clearly established above, the Snyder Act was not meant to change or add anything to Bureau of Indian Affairs that wasn't being done at that time. What was being done at that time in the area of general assistance? Representative Hayden on this point said at Page 4680:

The first class of items that are made in order by this bill relate to the general support and civilization, including the education of Indians. The physical support of Indians has practically ceased. There was a time some years ago when rations were issued to large numbers of Indians, both able-bodied and otherwise. This was done upon the theory that it

was cheaper to feed them than to fight them. Now only the aged and infirm Indians receive such support, and the amounts allotted for that purpose are comparatively small.

Proof of the Bureau's policy in this area can be found in attached Exhibit B, which is a copy of a February 14, 1914 letter from the Assistant Commissioner of Indian Affairs to the Superintendents relative to the destitution on the reservations. It reads in pertinent part:

Recognizing the fact that at this season of the year there is a possibility that cases of destitution and suffering among the Indians might be overlooked by the Superintendent in charge of the *reservation*, I am calling your attention to the urgent importance of the greatest possible care on your part to see that prompt relief is afforded in every case of actual destitution on *your reservation*. (Emphasis added)

Exhibit C, which is Circular No. 1732 dated December 12, 1921 from the Commissioner to the Superintendents on the same subject reads in pertinent part:

Reports reaching the Office indicate that on many *reservations* we will have to furnish food and clothing supplies to a number of Indians during the present winter, in addition to those who constitute the regular ration list On some *reservations* there have been partial or even total crop failures and the Indians have been able to make little preparation for the winter. (Emphasis added)

In this circular is found the beginning of the administrative use of the word "jurisdiction" interchangeably with "reservation." It reads in pertinent part:

In order that we may know definitely the needs of the particular *jurisdiction*, you are requested to submit an immediate, detailed report as to what amount, if any, will be necessary to carry *your Indians* through the remainder of the present fiscal year without suffering. (Emphasis added)

This language was still used eight years later as evidenced by Exhibit D which is Circular No. 2603, dated June 27, 1929, from the Commissioner to the Superintendents and reads in pertinent part:

Last year there was \$200,000 available in the reimbursable fund and it is believed that this amount has been used in a very creditable manner. In some cases the Superintendents found it unnecessary or impracticable to use the funds requested and authorized for them and in such cases the unused funds were withdrawn in order that Indian applicants *on other jurisdictions* might have the benefit of the money. (Emphasis added)

During the depression the Indian Service benefited from such organizations as the American Red Cross as illustrated by a series of communiques from the Commissioner to the Superintendents marked Exhibit E. Here the use of the word "jurisdiction" is used in reference to reservations. Its interchangeability can best be seen in the Circular of February 27, 1933 which reads in pertinent part:

Application will be approved by this Office and the Red Cross in quantities representing not more than 25% of the requirements of the total number of families under *your jurisdiction*, For instance, a *reservation* with a total population of 4500 Indians would have approximately 1,000 families In every case be sure to give the total population of *your jurisdiction*, (Emphasis added)

See also Exhibit F which is a July 17, 1933 Directive from Harry L. Hopkins, Administrator of the Federal Emergency Relief Administration notifying the State Administrators to include Indian, ward as well as non-ward, in the benefits given by that agency. Specific designation and identification with reservations was made. Bureau directives in conjunction with this program again used the language "needy Indian families under your jurisdiction." (Exhibit G)

Based on the above, it is the defendant's contention that it is evident the policy of the Bureau of Indian

Affairs in response to welfare assistance was limited to reservation Indians prior to the passage of the Snyder Act and most certainly subsequent to the passage. Plaintiffs contended that it is almost "preposterous" to assume that Congress, or anyone else for that matter, is or has been for any length of time aware that the Bureau of Indian Affairs denies welfare to Indians who reside off the reservations. The fact is that Congress knows and has known for many years that the Bureau's welfare program has been limited to reservation Indians. The plaintiffs can place any interpretation they want on the recent bills introduced in Congress on this matter but the fact remains that the real purpose of these bills is to require the Federal Government to assume full responsibility for providing welfare assistance for all Indians living on or off reservations in the States of Minnesota, North Dakota, South Dakota and Wisconsin and clearly indicates congressional awareness that Snyder Act assistance is not available to off-reservation Indians.

Further evidence that Congress is and has been aware of the limitation is illustrated in Exhibit I which contains departmental reports submitted to legislative committees on various appropriation bills during the 1960's. The language of these reports has been consistent. Pertinent segments are:

Financial assistance to needy Indians *on reservations* when such assistance is not available from other sources; . . .

Major welfare problems *on Indian reservations* are poverty and low living standards, breakdown of family stability, neglect or inadequate care of children, and inexperience or irresponsibility in use of personal funds. The continuing primary objectives of the welfare programs are to provide: (1) Financial assistance to needy Indians *on reservations* when such assistance is not available from other sources. . . . (Emphasis added)

Summary

There can be no doubt that the Bureau's assistance program has been limited to reservation Indians, was in-

tended to be and should be continued as such in the future. The basic principle in this matter is that there should be no distinction between Indians and non-Indians in eligibility for public services received from the States, and it is the position of the Bureau of Indian Affairs that insofar as possible Indians should have the same relationship to establish state and private welfare agencies as non-Indians and that state and local welfare departments should have the same responsibilities for providing services and assistance to Indians as they have to non-Indians in similar circumstances. Where these services are not available, the Bureau undertakes to provide them to Indians living within the boundaries of reservations insofar as it possible within its financial resources.

Respectfully submitted,

RICHARD K. BURKE
United States Attorney

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States
Attorney
Attorneys for defendant

Copy hereof mailed this 15th
day of October, 1969 to:

Mr. Roger C. Wolf
Papago Legal Services
Box 246
Sells, Arizona 85634
Attorney for plaintiffs

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States Attorney

112

EXHIBIT A

61 CONG. REC. 4659-4691

[OMITTED]

EXHIBIT B

Refer in Reply to the Following: Address Only the
E-Ind. Commissioner of Indian Affairs
H W S

[Received, Aug. 13, 1969, Bureau of Indian Affairs,
Phoenix]

DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

Relief of destitution.
Circular No. 827

Feb. 14, 1914

To Superintendents:

Recognizing the fact that at this season of the year there is a possibility that cases of destitution and suffering among the Indians might be overlooked by the Superintendent in charge of the reservation, I am calling your attention to the urgent importance of the greatest possible care on your part to see that prompt relief is afforded in every case of actual destitution on your reservation.

Of course, it goes without saying that where an Indian has funds, you will see to it that he is provided with actual necessities, but destitution and suffering must be prevented whether the Indian has funds or not. Such cases should be reported to the Office immediately by wire with a request for necessary authority. In extreme instances, it may be necessary to provide relief from supplies on hand, pending receipt of telegraphic authority.

You should take such means to carry out the spirit of this circular as will enable you to satisfy yourself that its requirements are complied with strictly.

/s/ E. B. Meritt
Assistant Commissioner.

EXHIBIT C

Refer in Reply to the Following Address Only the
Commissioner of Indian Affairs

DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

Dec. 12, 1921

Circular No. 1732

Relief of Destitute Indians.

TO SUPERINTENDENTS OR OFFICERS IN CHARGE:

Reports reaching the Office indicate that on many reservations we will have to furnish food and clothing supplies to a number of Indians during the present winter, in addition to those who constitute the regular ration list. The gratuitous issue of rations to Indians, especially to young and able-bodied ones is to be confined to cases of absolute necessity, cases in which suffering would otherwise result. I appreciate the fact that the general industrial depression which has been more or less prevalent throughout the country has affected the Indian as well as the white. In many cases, employment is not to be had, though, on the other hand many of the Indians do not take advantage of what opportunity they may have along this line. On some reservations there have been partial or even total crop failures and the Indians have been able to make little preparation for the winter. Then, too, there are individual cases constantly arising, which, through sickness or other cause, require some assistance.

Funds at our disposal for relief purposes are practically exhausted and it is necessary that we ask Congress for an additional appropriation for general relief throughout the Service. In order that we may know definitely the needs of the particular jurisdictions, you are request-

ed to submit an immediate, detailed report as to what amount, if any, will be necessary to carry your Indians through the remainder of the present fiscal year without suffering. Your estimate must be accompanied by a justification sufficiently complete to give Congress adequate proof that unless some such measures are taken as requested, suffering will result. When there are tribal funds to the credit of the tribe, the authorization of the necessary amount is contemplated from such funds rather than as a gratuity appropriation. You should estimate approximately the various articles of food and clothing which you will need, and the cost thereof. If you have any funds on hand which can be used for relief purposes or if you anticipate any applicable savings later in the year, you should so state.

While it is desired that all possible assistance be extended to deserving cases, in view of the present demand and necessity for economy, our estimates must be kept as low as possible. You are not, however, to take this letter as an assurance of any general assistance for any Indians, but merely as the first step in an effort to tide them over the present hard times.

Your immediate attention is desired.

/s/ [Illegible]
Commissioner.

(3750)

EXHIBIT D

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
Washington

Circular No. 2603

Use of Reimbursable Funds.

Jun. 27, 1929

To Superintendents:

Last year there was \$200,000 available in the reimbursable fund and it is believed that this amount has been used in a very creditable manner. In some cases the Superintendents found it unnecessary or impracticable to use the funds requested and authorized for them and in such cases the unused funds were withdrawn in order that Indian applicants on other jurisdictions might have the benefit of the money.

The 1930 appropriation act authorizes the use of \$450,000 for use throughout the Service, on the reimbursable plan, but specifies that \$125,000 of it shall be available for expenditures for the benefit of Pima Indians, leaving \$325,000, or an increase of \$125,000 over last year, for general use. With the appointment of additional Directors of Agriculture and Home Demonstration Agents, there is little doubt that there will be many demands on this appropriation. With the view of giving the Indians generally the opportunity of using some of this money, should conditions warrant, *if you have not already done so*, you should submit an estimate of the amount which you think can be well placed at your jurisdiction, with a full justification for its use. While there is no assurance that any amount which you may name will be allowed, an estimate from each Superintendent is desired in order to consider the needs throughout the Service so

that the funds can be placed where the best use will be made of them.

In regard to making loans for the support of old, disabled, or indigent Indians, it is not the plan to eliminate the ration roll through the use of the reimbursable fund, nor to use a large amount for support purposes. The appropriation was made primarily for industrial assistance, and the clause in regard to loans on account of age, disability, or indigence was inserted for the purpose of taking care of such cases as may arise for which no provision can otherwise be made.

Please submit your reply to reach this Office not later than July 15, 1929.

Sincerely yours,

/s/ [Illegible]
Commissioner.

EXHIBIT E

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

F—O

Circular No. 2885

Availability Red Cross cotton.

Oct. 4, 1932

To all Superintendents:

As you may know, recent legislation made available for distribution through the American Red Cross, an additional 45,000,000 bushels of relief wheat from Farm Board stocks, together with a quantity of cotton. Most superintendents have heretofore availed themselves of the opportunity to secure relief flour and are familiar with the procedure to be followed.

With regard to the cotton which is now made available, distribution is being made by the Red Cross in the form of cotton goods, with possibly some manufactured articles of clothing to be distributed later. The types of cloth now available are as follows:

PRINTS, suitable for dresses and boys' suits;
GINGHAM, suitable for dresses and boys' suits;
MUSLIN, Suitable for slips;
OUTING FLANNEL, suitable for night clothing;
SHIRTING, suitable for men's and boys' shirts;
BIRDSEYE, suitable for diapers.

Various uses other than those mentioned above may occur to you.

In order that needy Indians may participate in the distribution of the cotton goods, it is suggested that you send to the Office at once an estimate of the yardage of each type of cloth that will be needed for issue to needy Indians under your jurisdiction. The procedure to be followed in requesting cotton goods is exactly the same as

that followed in the case of relief flour and crushed wheat. Requests will be submitted by the various superintendents to the Washington office where they will be checked, entered on the proper forms and sent in turn to the Washington headquarters of the Red Cross. Since the quantity of cotton goods is limited and the demands are great, your request should be gotten into the Office at the earliest possible moment.

Definite instructions have been given by the Red Cross that any cotton goods or clothing which may be furnished for use of the needy are under no circumstances to be sold or distributed in a way which could be so construed. The cloth and clothing are not to be used in work relief projects; that is, issued in return for service rendered.

Each jurisdiction locally handling cloth and clothing distributions will be accountable for the use of the cloth and clothing in accordance with the letter and spirit of the act of Congress, and will likewise be responsible for all charges after delivery of the cloth and clothing to the original consignee. The expense of production of garments after the cloth is furnished must be met locally.

The number of families actually under the care of the agency that will make the clothing distribution should be the approximate basis for determining quantities. Naturally not every family will require cloth or clothing. Applications should not exceed an average of 20 yards of material per family at the present time. For instance, if you have 400 families which are to participate in the distribution, the total number of yards of cloth requested is not to exceed 8,000. The number of families involved should always be stated when the original request is made. The necessity for stating the number of families also applies to requests for flour.

Cotton goods may be issued to mission schools on the same basis as flour was issued; that is, only those schools which have taken in additional pupils as a relief measure are entitled to such assistance.

Sincerely yours,

/s/ [Illegible]
Commissioner.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington

F-O

Circular No. 2892

Availability ready made garments.

Oct. 22, 1932

To all Superintendents:

Information has been received from the Washington headquarters of the American Red Cross that certain ready made garments are now available for distribution, which distribution may include needy Indians, particularly women and children, who have not been and will not be able to make any considerable use of the articles of surplus clothing which are turned over to us from War Department stocks. The garments available are as follows:

1. UNDERWEAR:

For women and older girls—short sleeves and ankle length. (average wt. 10 lb. per doz.)

" " " " "

—medium weight flat knit bloomers.

For children—long sleeves and ankle length. (average wt. 9 lb. per doz.)

For infants—medium weight ribbed knit shirts.

2. HOSIERY:

For women and older girls—mercerized lisle hose, black, tan, gray.

For boys and girls (4-13)—heavy ribbed, black and dark brown.

For infants—stockings, medium weight, light colors.

3. OUTER GARMENTS:

For boys 6 to 14—knickers of cottonade, covert, cotton tweed and corduroy.

For men and boys—high back bib overalls, denim.

For men—denim jumpers.

For children 4 to 6—play suits (coveralls), hickory and denim.

In order that needy Indians may participate in the distribution of these garments it is suggested that you send to the Office at once an estimate of the number of each type of garment that will be needed for issue to needy Indians under your jurisdiction. The procedure to be followed in requesting such garments is the same as that followed in the case of relief flour and, more recently, the cotton goods. Requests will be submitted by the various superintendents to the Washington office, where they will be checked, entered on the proper forms, and sent in turn to the Washington headquarters of the American Red Cross.

Definite instructions are given that the clothing must under no circumstances be sold or distributed in a way that could be so construed. It must not be used in work relief projects, that is, given in return for service rendered.

In requesting garments, be sure to indicate the number of individuals or families who are to benefit in the distribution. Each jurisdiction handling garments will be accountable for the use of the cloth and clothing in accordance with the letter and spirit of the act of Congress, and will likewise be responsible for all charges after delivery to the agency shipping point.

Garments covered by this circular may be issued to mission schools on the same basis as flour and cotton goods, that is, to schools which have taken in additional pupils as a relief measure are entitled to such assistance, and the quantity of garments requested for such schools is to be calculated only upon such additional enrollment, not upon the total enrollment.

/s/ [Illegible]
Commissioner.

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

F - O

Circular No. 2899

Red Cross Sweaters.

Jan. 3, 1933

To all Superintendents:

Cotton sweaters for men, women and boys and girls, and dark flannel cotton cloth are now available from Red Cross stocks, and your applications for these articles for distribution to needy Indians under your jurisdiction will be considered.

These articles are solely for relief of needy Indians and are not to be requisitioned for use in Government schools, hospitals or other institutions. Mission schools educating Indian pupils may participate in the distribution only to the extent of additional pupils whom they have taken in this year as a relief measure.

Application may be made for 7 dozen sweaters for each 100 families. The break-up of this 7 dozen is approximately as follows:

Boys' and Girls' (5 to 16 years, not inclusive)	24.5%
Women's (16 years up)	37.2%
Men's (16 years up)	38.3%

If, because of special conditions in a given community, a larger per cent of any one or two of the three classifications (boys' and girls', women's, men's), is desired, substitution may be made by increasing one and decreasing the other. The basis for such substitution will be $1\frac{1}{2}$ dozen boys' and girls' sweaters equal one dozen women's sweaters or one dozen men's sweaters. For instance, if there are 500 families to receive sweaters, request could be made for 35 dozen, which under the above percentage would call for 9 dozen boys' and girls', 13

dozen men's and 13 dozen women's sweaters. Should more boys' and girls' and less men's and women's sweaters be desired, a trade could be arranged.

The Red Cross indicates that additional dark flannel is available for distribution as long as the material lasts. Applications for this cloth will not be restricted to 20 yards to a family, but will be shipped in quantities which those making and those granting the requests feel reasonable. This cloth is suitable for the following garments: Dresses for girls and blouses for boys, bloomers and slips for women and girls, pajamas for men and boys, and jackets of the lumber jacket type made with the doubled material nearly to the waist. This flannel is made up in dark check and stripes with at least six patterns and three color combinations for each pattern.

In making requests for these articles be sure to state the total number of families under your jurisdiction and the total number of families which are receiving help from the Government. The Red Cross suggests that maximum applications be held down to 40% of the population with an average of about 20%. These figures are well above allowances ordinarily made Red Cross chapters engaged in outside relief work.

/s/ C. J. Rhoads
Commissioner.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
Washington

Circular No. 2910

Additional Red Cross garments,
bedding, blankets, etc.

Feb. 27, 1933

To Superintendents
and other Field Officials.

Additional cotton has been turned over to the Red Cross by Congress for manufacture into goods for the relief of needy people. From this lot items will be available as listed on the attached sheet.

Applications will be approved by this Office and the Red Cross in quantities representing not more than 25% of the requirements of the total number of families under your jurisdiction, with the exception of sheeting, which will be furnished on the basis of six sheets per family for not more than 2% of the total number of families, with the understanding that this item will be furnished only for the sick and aged. See "Standard Assortment for 100 families", as given on the attached sheet.

For instance, a reservation with a total population of 4500 Indians would have approximately 1,000 families. Of these 1,000 families we can help from this latest distribution of Red Cross goods not more than 25% or 250. Please do not ask for more goods than can possibly be furnished you.

Applications for the items now available should be submitted through this Office at once. In every case be sure to give the total population of your jurisdiction, total number of families and the number of families for which the Red Cross goods are being requested. Do not request any substitutes. Bear in mind (1) that

such Red Cross assistance is intended only for needy people, and (2) that no labor reimbursement can be required from any Indian recipient.

Since the demand for these goods will probably be considerably in excess of the supply available, we urge that your requests be gotten in to the Office at the earliest possible moment. However, telegraphic or radiographic applications will not be considered.

Sincerely yours,

/s/ C. J. Rhoads
Commissioner.

EXHIBIT F

FEDERAL EMERGENCY RELIEF ADMINISTRATION
OFFICE OF ADMINISTRATOR
Washington

July 17, 1933

TO STATE EMERGENCY RELIEF ADMINISTRATORS.

The State Emergency Relief Administrations are authorized to expend funds received under the Federal Emergency Relief Act for Indians—ward as well as non-ward. The Office of Indian Affairs will continue to be responsible for the relief of ward Indians in concentrated Indian areas but where the State-wide relief organization covers areas through which Indians are scattered, it is felt that a more economical administration can be secured by including Indians in the general program.

The Commissioner of Indian Affairs has authorized the superintendents and other employees on Indian reservations to assist in State programs when called upon. The superintendents are being requested to keep in touch with the State administrators.

The Office of Indian Affairs through the Emergency Conservation program and prospective road and other public works appropriations will be able to furnish considerable employment to non-ward, as well as to ward, Indians and State directors should be in contact with reservation superintendents in charge of these programs.

Enclosed is a list of Indian jurisdictions in your State.

Sincerely yours,

/s/ Harry L. Hopkins
HARRY L. HOPKINS,
Administrator.

EXHIBIT G

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

Circular No. 2936
Federal Relief.

Aug. 1, 1933

To Superintendents:

Following a conference with representatives of the Indian Office, Honorable Harry L. Hopkins, Federal Emergency Relief Administrator, sent the following letter to State Emergency Relief Administrators in Indian country:

"The State Emergency Relief Administrations are authorized to expend funds received under the Federal Emergency Relief Act for Indians—ward as well as non-ward. The Office of Indian Affairs will continue to be responsible for the relief of ward Indians in concentrated Indian areas but where the State-wide relief organization covers areas through which Indians are scattered, it is felt that a more economical administration can be secured by including Indians in the general program.

"The Commissioner of Indian Affairs has authorized the superintendents and other employees on Indian reservations to assist in State programs when called upon. The superintendents are being requested to keep in touch with the State administrators.

"The Office of Indian Affairs through the Emergency Conservation program and prospective road and other public works appropriations will be able to furnish considerable employment to non-ward, as well as to ward, Indians and State directors should be in contact with reservation superintendents in charge of these programs.

"Enclosed is a list of Indian jurisdictions in your State."

We feel that it is highly desirable for superintendents to get in touch with the State Emergency Relief Administrators to present the needs of scattered Indians in their territory and to offer assistance and cooperation to the State program. We are entirely in accord with the spirit of Mr. Hopkins' letter and feel that our aim as well as that of the State should be the same, namely, to afford relief in the most satisfactory and economical manner. The Indian service should certainly not be in a position of trying to impose upon the State Relief Administration but solely to work out the best possible program.

It is Mr. Hopkins' desire that the superintendents communicate only with the State Administration—never to him directly. If any problems occur they should be taken up with this Office and not with the Federal Emergency Relief Administration. We feel, however, that you will be able to work out any needed cooperation within the State without any reference to Washington. We would, of course, wish to be informed of cooperative programs which are worked out.

(See Circular Letter of January 17, 1933, "State Aid—R. F. C. Funds".)

/s/ John Collier
Commissioner.

F - O
E J A

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

Circular No.

Participation of Indians in
distribution of relief hogs.

Aug. 29, 1933

To all Superintendents:

There is a possibility of Indians, both ward and non-ward, being permitted to participate in the distribution of relief hogs now being arranged by the Federal Emergency Relief Administration. Distribution of course will be in the form of meat rather than livestock.

The original allocation of this form of relief will be made by the Federal Relief Administrator to the Emergency Relief Administrators of the several states on the basis of the number of families being assisted by such states. Instructions have been sent out by the Washington relief headquarters indicating the eligibility of Indians to participate in this distribution. If you desire any of this meat for needy Indian families under your jurisdiction, you should immediately get in touch with your State Emergency Relief Administrator, making application for this form of help for the number of families under your jurisdiction now in need of assistance. You should advise the state administrator of the number of ward Indians who are now being furnished relief by you or who are in immediate need of assistance.

/s/ John Collier
Commissioner.

Not sent; by direction of Mr. Armstrong.
October 26, 1933.

EXHIBIT H

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

Washington 25, D. C.

[Dept. Emblem]

Dear Mr. Aspinall:

Your Committee has requested a report on H. R. 9621, a bill "To provide (1) that the United States shall pay the actual cost of certain services contracted for Indians in the States of Minnesota, North Dakota, South Dakota, and Wisconsin; and (2) for a more equitable apportionment between such States and the Federal Government of the cost of providing aid and assistance under the Social Security Act to Indians."

We recommend that the bill not be enacted.

The purpose of the bill is to require the Federal Government to assume full responsibility for providing education, medical assistance, agricultural assistance, and welfare assistance for all Indians, as defined very broadly in the bill, living on or off reservations in the States of Minnesota, North Dakota, South Dakota, and Wisconsin. The definition is very broad and includes all persons whom the community chooses to regard as Indian. Whenever by contract a State agrees to provide the above-mentioned services, the contract must provide for the Federal Government to pay the actual costs involved, including administrative costs. The implication appears clear that in the absence of such contract the State has no responsibility for providing these services.

We believe that it is grossly discriminating to set aside a group on the basis of ethnic origin and provide that a

BUREAU OF INDIAN AFFAIRS

State or local government does not have the same responsibilities toward the members of the group as it acknowledges toward other persons in similar circumstances. The bill would have the effect of setting Indian citizens, wherever they might live, apart from other citizens, with a different relationship to their State and local governments even though they may have been born or may have lived for many years in an off-reservation community.

Communities which have been providing services to Indians and non-Indians alike, without question, might begin to distinguish between them, not necessarily with any thought of discrimination, but in order to secure Federal assistance with respect to Indians.

It has been the position of this Department for many years that insofar as possible State and local governments should have the same responsibility for providing assistance and services to their Indian residents as for non-Indians in similar circumstances. It is recognized that the tax-exempt status of Indian lands has an impact upon the financial ability of the local or State government to provide such assistance and services. Therefore, the Federal Government has recognized certain responsibilities for Indians living on reservations or other tax-exempt Indian lands. It should be noted that even Indians on reservations are not now regarded as an exclusive Federal responsibility because many of them share equally with other citizens in various State services.

The education, welfare, and agricultural programs for Indians have for years been prepared in terms of Indians who live on reservations or other Indian-owned tax-exempt land. Appropriations estimates have been prepared on that basis, and appropriations by Congress have been made on that promise. If the Federal Government were now to assume financial responsibility for services in these fields to Indians as defined in the bill, wherever they may live within a State, greatly increased appropriations would be required. The bill is applicable only to the four States named, but we believe that there is

no sound basis for establishing for those four States policies which are different from the policies applicable to other States with considerable Indian populations. If the bill were enacted, it would require greatly increased annual appropriations for Indian education, health, welfare, and agricultural programs and a substantial increase in administrative personnel. We are not in a position at this time to estimate the total amount of the additional cost involved.

The definition of an Indian in section 2 would also create insurmountable problems in determining membership. The Federal courts and this Department have recognized that the tribes have the primary responsibility for determining their own membership, except where otherwise provided by law or by Departmental regulations. The bill fails to take into consideration either the rights of the tribe or the wishes or desires of those individual Indians who, by their own action or motion, have severed reservation ties and have moved and established themselves elsewhere. Apparently, under the provisions of the bill a community may determine the racial status of an Indian without regard to whether such individual meets any of the requirements of the tribes or the Federal Government. Because of the increasing numbers of those who have left the reservations and established themselves elsewhere, the numbers of people with some degree of Indian blood, and the increasing diminution of degree of Indian blood, the bill would soon encompass many who would otherwise not be classified as Indians, in many respects against their choice, and in other respects against the laws or wishes of the tribes.

The records of this Department contain the names of many persons who have never been identified as Indians who are eligible for Federal services, but who would be designated as Indians under the bill. For example, a roll for the distribution of a judgment of the Court of Claims or the Indian Claims Commission contains the names of persons who are listed, not as Indians, but merely as descendants of persons who were members of an Indian tribe 100 years ago. The tribe has long since

ceased to exist, and the descendants of the tribal members have not been associated with or identified as Indians for nearly as long. They would, however, be designated as Indians for the purpose of the bill. Another example is the census records of Indian tribes which contain the names of many persons who are not tribal members but appear on the list because it is a census rather than a membership roll. Many of such persons are not even citizens of the United States but are in fact Indian nationals of Canada residing in the United States on the basis of a treaty of law affording freedom of entry into the United States. Under the bill those persons would be designated as Indians entitled to special Federal services.

With respect to section 3 of the bill, this Department is not responsible for administering the programs of old age assistance, aid to dependent children, aid to the blind, and aid to the permanently and totally disabled, under the Social Security Act. We shall therefore defer to the views of the Department of Health, Education and Welfare on this section of the bill. Although the section is patterned after a similar statutory provision that is applicable to the States of Arizona, New Mexico, and Utah with respect to payments in the first three categories named above to Navajo and Hopi Indians living on their reservations, we believe that legislation of this type is undesirable. The policy of this Department is to bring about equal and full recognition of the Indians as citizens of the States in which they reside with all the rights and privileges of other citizens and with the same responsibilities and duties. We are therefore not in favor of legislation which sets the Indian apart from other

citizens in a State-wide assistance program and establishes a special Federal responsibility.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,
Secretary of the Interior

Hon. Wayne N. Aspinall
Chairman, Committee on
Interior and Insular Affairs
House of Representatives
Washington 25, D. C.

**EXHIBIT I, PORTIONS OF SUNDRY HEARINGS
BEFORE CONGRESS, OMITTED**

**CIVIL DOCKET
UNITED STATES DISTRICT COURT**

Civ-2408 Tuc.

Jury demand date:

**RAMON RUIZ and ANITA RUIZ, for themselves and
all others similarly situated, PLAINTIFFS**

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

For plaintiff:

**ROGER C. WOLF, Esq. Retired—2/18/70
Papago Legal Services Program
Box 246
Sells, Arizona 85634**

Mail notices to

**WINTON D. WOODS
College of Law
University of Arizona
Tucson, Arizona 85721**

For defendant:

**EDWARD E. DAVIS
U. S. Attorney
RICHARD S. ALLEMANN
Asst. U. S. Atty.
5000 Federal Building
Phoenix, Arizona 85025**

STATISTICAL RECORD	COSTS
J.S. 5 mailed Mar. 5, 1968	Clerk
J.S. 6 mailed	Marshall
Basis of Action: U. S. a party Complain in Mandamus, for	Docket fee
Judicial Review and for De- claratory Judgment regarding	Witness fees
assistance to Indians	
Action arose at: Ajo, Pima, Ariz living off Indian Reser- vation.	Depositions

DOCKET ENTRIES

DATE	PROCEEDINGS
1968	
Feb. 19	1. File Application for Leave to Proceed in Form Pauperis, Memo. of Points and Auths. and Affidavit in Support of Application.
Feb. 19	— MINUTE ENTRY: Order grant plaintiffs leave to file complaint herein without prepayment of filing fee.
Feb. 19	2. File Complaint.
Feb. 19	— Issue Summons.
Apr. 5	3. File Summons returned by Marshall showing service on Stewart L. Udall by agent personally at Interior Dept., Washington, D. C. on March 28, 1968, at 3:00 p.m.
Apr. 19	4. Docket Stipulation that the defendant may have to and including 5/20/68 within which to answer or plead, filed at Phoenix on 4/17/68.
May 21	— Mail certified copy of Minute Entry of February 19, 1968 to counsel for Plaintiffs and deliver copy to Marshal.
May 23	5. Docket Stipulation giving Defendant to and including June 3, 1968 within which to answer, plead or otherwise appear, filed at Phoenix May 21, 1968.
June 11	6. Docket Answer filed in Phoenix on June 7, 1968.
June 27	— MINUTE ENTRY: On motion of counsel for plaintiffs, leave is granted to plaintiffs to commence and prosecute this action without prepayment of fees and costs.
June 27	— Mail notice of minute entry to counsel.

DATE

PROCEEDINGS

1968

- Sep. 17 — MINUTE ENTRY: It is ordered that this case is set for pretrial hearing on Monday, December 2, 1968, at the hour of 3 o'clock p.m.
- Sep. 17 — MINUTE ENTRY: It is ordered that this case is set for trial to the court on Thursday, December 12, 1968, at the hour of 9:30 o'clock a.m.
- Sep. 20 — Mail notice to counsel of pretrial and trial settings.
- Nov. 1 7. Enter and file Order Regarding Pretrial.
- Nov. 1 — Copies of order regarding pretrial mailed to all counsel from Judge's Office.
- Nov. 27 — MINUTE ENTRY: The Court being advised that this case will likely be disposed of upon cross-motions for summary judgment, it is ordered that the trial setting for December 12, 1968, is vacated; and the Court will set the motions for summary judgment for hearing when filed.
- Nov. 28 — Copies of minute entry of 11/27/68 mailed to counsel for plaintiffs and to U. S. Attorney at Phoenix and Tucson.
- Nov. 29 8. Docket Defendant's Motion for Summary Judgment, filed at Phoenix 11/27/68.
- Dec. 2 9. Docket Agreed Statement of Facts, filed at Phoenix 11/29/68.
- Dec. 9 10. Docket Plaintiffs' Motion for Enlargement of Time, filed 12/6/68.
- Dec. 9 — Mail notice of hearing plaintiffs' motion for enlargement of time on Monday, Dec. 23, 1968, at 2:30 a.m., to counsel.

DATE

PROCEEDINGS

1968

- Dec. 23 — MINUTE ENTRY: Plaintiffs' Motion for Enlargement of Time for hearing. No appearance by or on behalf of either party. It is ordered that the time within which defendant may respond to motion for summary judgment is extended until 30 days following Supreme Court decision.

1969

- June 5 11. File Plaintiffs' Response to Defendant's Motion for Summary Judgment, and Affidavit.
- June 5 12. File Plaintiffs' Memorandum in Support of Cross-Motion for Summary Judgment.
- June 18 13. File Notice of Hearing plaintiffs' Cross Motion for Summary Judgment on Monday, June 30, 1969, at 2:00 p.m.
- June 30 — MINUTE ENTRY: Plaintiffs' Cross Motion for Summary Judgment on for hearing. Roger C. Wolf, Esq., appears for pltfs. Richard S. Allemann, Ass't. U. S. Atty., appears for Govt. Hearing is had. Order deny motion of the several parties for summary judgment.
- Oct. 3 14. File Plaintiffs' Motion for Summary Judgment.
- Oct. 3 15. File Notice of Hearing Motion for Summary Judgment on October 20, 1969, at 2:00 p.m.
- Oct. 18 16. File Stipulation and enter order continuing hearing on motions for summary judgment to November 3, 1969, at 2:00 p.m.
- Oct. 15 17. File Defendant's Second Memorandum in Support of Motion for Summary Judgment Docketed at Tucson 10/20/69.

DATE

PROCEEDINGS

1969

- Nov. 3 — MINUTE ENTRY: Plaintiffs' Motion for Summary Judgment and Defendant's Motion for Summary Judgment for hearing. Roger C. Wolf, Esq. and Winton B. Woods, Esq., appear on behalf of the plaintiffs. Richard S. Allemann, Ass't. U. S. Atty., is present on behalf of the defendant. Hearing is had. It is ordered that defendant's motion for summary judgment is granted. It is ordered that plaintiffs' motion for summary judgment is denied. The Clerk is directed to enter judgment that the plaintiffs take nothing by their complaint and the action be dismissed.
- Nov. 4 18. Enter and file Judgment that the plaintiffs, Ramon Ruiz and Anita Ruiz, take nothing by their complaint and that the same is dismissed.
- Nov. 4 — Mail copies of Judgment and Minute Entry of 11/3/69 to counsel.
- Dec. 17 19. File plaintiffs' Notice of Appeal.
- Dec. 17 — Mail copy of Notice of Appeal to U. S. Attorney, Phoenix.

1970

- Jan. 23 — MINUTE ENTRY: It is ordered that the time within which to file and docket the record on appeal herein is extended to and including March 13, 1970.
- Jan. 26 — Mail copy of extension of time for filing record on appeal to Roger C. Wolf, and Richard S. Allemann.
- Mar. 13 — Transmit Record on Appeal to Clerk, U. S. Court of Appeals for the Ninth Circuit.

DATE

PROCEEDINGS

1970

- Mar. 13** — Mail copies of Clerk's Certificate and Index to Record on Appeal to Roger C. Wolf, Winton D. Woods and Richard S. Allemann.
- Mar. 13** — Enter in Judgment Docket the costs incurred in preparation of Record on Appeal.

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 25568

RAMON RUIZ AND ANITA RUIZ, for themselves and
all others similarly situated, APPELLANTS

v.

ROGERS C. B. MORTON, Secretary of the Interior,
APPELLEE

APPELLANTS' MEMORANDUM IN RESPONSE TO THE
COURT'S ORDER OF JANUARY 3, 1972

The purpose of this submission is to supply additional legislative history on the issue of the responsibility of the Bureau of Indian Affairs under the Snyder Act for off reservation Indians. There appear to be three questions in this area. First, did the Snyder Act create such a responsibility. Second, did the Social Security remove it if it did exist. And third, if it did exist and was not removed by the Social Security Act, has it been limited by a policy of the Bureau which has been communicated to and approved by Congress.

On the first question we cannot disagree with the government's analysis that the Snyder Act was not intended to create new obligations. This, however, does not even begin to answer the question. The government's reference to the use of undefined terms such as "jurisdiction" in internal Bureau documents does not help either. Rather than here restate our earlier arguments on the clear language of the statute we will rely on the House Report on the Johnson-O'Malley Act of 1934 set out at page 89-90 of the appendix. This report clearly recognizes the Bureau's "... responsibilities for the welfare of the Indians . . ." in areas where "... Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population."

On the second question we can only say that it is apparent that the Social Security Act and it is altogether silent on this question, and that even if it were otherwise it provides only for categorical assistance programs which are not at issue here.

As to the third question we strongly maintain that a self-imposed limitation such as is argued for here, not being authorized by statute, is not within the power of the Bureau in the first instance. That issue aside, however, we believe that an analysis of the statutory history supplied by the government and our own modest additions thereto cannot fairly be said to show any understanding by Congress of the nature and extent of the argued for limitation, let alone any approval thereof. The records of the last 20 years reveal 23 references in addition to those cited by the government. These are included in the appendix and include last years hearings which contain the most thorough discussions of the problem that the appropriations committees have ever engaged in. In the discussion that follows emphasis will be laid on the actual discussions wherever possible since they shed greater light on the problem than a few references to the word "reservation" in the written reports and prepared statements. The very confusion and inconsistencies that we are trying to point out make it virtually impossible to organize this material in anything but a chronological order so this is the method we have chosen to use.

The first reference of note is contained in the government's submission and is to the 1942 hearings. The subject under discussion at that time was aid to Indians in or near urban communities, especially in the state of Nevada. At that time Bureau officials specifically told Congress that the only reason that these people were not being served was the existence in the act of the restrictive word "rural". It was said that the removal of that word would allow service to urban Indians. No mention of reservations is made and the word "rural" was subsequently removed from the act and does not appear in the statute dealt with here.

On page one of our appendix is the testimony of Mr. Meyer a Bureau official. Senator Young directly asked

him in 1952 whether an Indian off the reservation was eligible for relief and he did not answer. That same year in answer to questioning from Congressman Norrell, Mr. Meyer stated for the record that there were 427,000 Indians in the United States. This figure is roughly that of the 1950 census and reflects the entire Indian population of the country. Since Mr. Meyer was using this figure (appendix pp. 2) as justification for the large number of Bureau employees it is reasonable to suppose that he was claiming responsibility for them.

The next year the 82nd Congress heard testimony (pp. 3-5) on the situation of the 35,000 Indians in Eastern Oklahoma whom the Bureau serves. They are contrasted to those of Western Oklahoma who "still own a great deal of trust land." The justification for the inclusion of the eastern group is their isolation and poverty. Again the national total is listed at about 437,000 (page 4).

Two years later the Senate was told that the estimate was down to 400,000 and that 3/4 of them lived on or near reservations (page 6). The reasons for the drop or the significance of the fraction are not made clear but the implication would seem to be that the relocation program then under discussion was available at least to 300,000 Indians living on or near a reservation.

Two years later the figure was still at 400,000 "on reservations and in different places" to support a requested increase for law enforcement personnel (page 8).

The next year the figure went back up to 450,000, "Under the jurisdiction of the Bureau of Indian Affairs," again for the purpose of defending staff and increases from an assault by Senator Dworshak from Idaho, and it remained at that level in the next year (pages 9, 10).

In 1959 (pages 11-12) the Senate had the benefit of the testimony of Emmons, Greewood, and Gifford which has already been quoted to this court in briefs of counsel. There is in fact in their testimony a statement that the Bureau assists only those on reservations. They say that they do this because otherwise Indians could not establish residence of the reservation. The fallacy of this argument has been clearly established by the courts. They say also that the states supply benefits which are not re-

flected by the admitted facts in this case. They also say that they don't do it because the Indians might leave the reservations, a reason which is hardly consistent with Congressional intent. They do, however, seem to state the argued for position.

However, the next year in response to probing by Senator Mundt, Commissioner Emmons stated that the Bureau could provide services to voluntarily relocated Indian in communities like Rapid City, and we also have a distinction drawn between cities near reservations, such as Rapid City, and those far away, such as Boston (pages 14-15) and this statement is repeated to the same Senator the next year (pages 16-17).

More importantly that same year the House Committee was told that the Bureau was planning direct subsidies to Indians who would move off the reservations like Turtle Mountain where economic development was unlikely. This plan is directly contrary to any supposed reservation boundary limit (pages 18-19). There is also a report citing 520,000 Indians, 360,000 of whom live on or near reservations. Again, the significance of these figures is not clear but they are being used to justify program increases. Having announced this program for subsidizing off reservation Indians Mr. Emmons turned around and said that Bureau responsibility existed when "Generally the Indians are living on trust lands, either allotted or tribal lands." And Miss Gifford reiterated that "We do expect the county offices to take care of those Indians who do not live on the reservation." Since the Turtle Mountain people were to be moved off of their trust lands and into counties these statements are completely contradictory.

The next year before the Senate committee, Commissioner Crow stated that services were *in general* limited to Indians residing on trust property. The distinction, however, is a difficult one as those Indians are contrasted with those who have "established themselves in the general society" or "established themselves in the normal communities." This distinction appears to incorporate some concept of acculturation and it is unclear where the separate Indian community not on trust property

would fit in (pages 24-25 and 27). That same year the Senate was also told that leaving the reservation would mean the forfeiture of schooling and hospitalization benefits (page 26). As has been stated before and will appear later, this statement was not even accurate in that health benefits are in fact available to on-reservation Indians as well as certain educational grants. The House was also told, again by Miss Gifford, that the Bureau considered the 375,000 Indians living on reservations their direct responsibility.

The next Session, however, the House heard the figure of 380,000 for those living "on or near" reservations as being eligible for services. Mr. Nash was asked directly who the Indian Service considered to be an Indian, but, unfortunately, was not given a chance to answer.

The 88th Congress 2nd Session Senate Committee again was told that 380,000 Indians on or near reservations were included as opposed to those living in Los Angeles, San Francisco, Chicago, Denver and Minneapolis. Here again we have a dichotomy set up that does not begin to tell us which group appellant's herein belong to. We do, however, find a guide at the top of page 33. Eligible Indians ". . . reside on trust land or so close to it that the program of the reservation would be affected . . ." This is the beginning of a policy which comes out much more clearly a little later on. There are no further comments at this point so it is impossible to judge what is close and what would be an affect but this is hardly consistent with the absolute distinction of the regulations here in question. Interestingly enough the House committee of the same session was told that the Bureau expects the states to meet 100% of the need of the off-reservation groups (page 34). This distinction is somewhat garbled by confusion with the categorical programs. It is further confused by the Bureau's statement that Rapid City is now considered "near" a reservation and residents thereof are eligible for the various relocation services (page 35). It appears that Senator Mundt (ante) has had an effect on the Bureau, and they have "relaxed (their) rules for entitlement to the service" (page 37). The House is now told that the most suc-

cessful Bureau programs ". . . solve the problems of those who leave the reservation," and that "Close by the reservations we also have all kinds of responsibilities. We have Oklahoma, Alaska, and other places that do not have reservations" (page 39). Again we have the contrast with distant cities such as Los Angeles, San Francisco, Denver, and Chicago where the Bureau does not have responsibility. Here again is the idea of closeness to the reservation where "the way in which they live effects reservation programs" because "they move back and forth, etc." The court is referred to the Stucki affidavit on page 79 of the transcript herein for an analysis of the way in which Appellants live, their ties to the reservation and their back and forth movements.

The first session of the 89th Congress was told by retiring Commissioner Nash that the Bureau "provides essential services where local governments do not provide them," "fill(s) in with Bureau services where local or tribal government is usable to meet essential needs," and wants more funds to provide increased general assistance funds to provide "increased general assistance and child welfare caseloads, notably in Indian communities located in economically depressed areas." No reservation limitation is expressed, in fact "The Bureau also recognized that some Indians, like some non-Indians wish to work close to home, while others are attracted by the greater opportunities of city life. Our programs, therefore, are designed to help the individual seek and find his opportunity wherever it may be" (Pages 42-43). Further on Commissioner Nash goes in some detail into the eligibility criteria for the Indian schools, these criteria do not include living on a reservation but are based on cultural and language problems as well as isolation (pages 44-45).

In the same report Senator Bible questioned Dr. Wagner concerning Public Health Service activities in Nevada. These activities are covered by the same enabling legislation at issue here. Dr. Wagner stated that trust land was not the sole criteria for eligibility, that except in the large urban communities a culturally identifiable Indian community was eligible for their housing and

other programs (pages 46-48) and that these programs were carried out in conjunction with the Bureau of Indian Affairs.

The 89th Congress 2nd Session Senate Committee heard the results of an investigation it had ordered the previous year (pages 40-41) into the needs of the off reservation Indians. This report is quite thorough and is set out in its entirety at pages 49-57 of the appendix. The recommendations include the establishment of Public Health Service facilities in Rapid City, and much more Bureau involvement in that and similar areas. It is stated that although the Bureau is reluctant to open up a full scale general assistance program there it will move in if a small additional input will improve the situation. The Bureau also indicated (pages 55-56) that it was then providing full welfare benefits for relocated Indians in California until they could meet the 3 year residency requirement which was then in force. They did state that this benefit was not available to those who had moved to California on their own but did not attempt to justify this distinction other than by saying that if they did give assistance to self-relocated Indians they could not ever establish residence. This distinction is completely illogical since ability to establish residence in California would not depend on who had purchased the bus ticket, and there appears no other support for the distinction. However there is no question that Congress was then aware that the Bureau was in fact providing general assistance benefits to some off-reservation groups and was recommending to its staff that these benefits as well as others be made available, at least in a limited way to other off-reservation groups. This would open up the question as to whether the distinction between those groups and Appellants herein is legally supportable.

The responsibility for near reservation Indian communities continues to be expressed in the reports thereafter. The effect of this can be seen in the question put to Commissioner Nash by Senator Bible at page 65. He wanted to know the numbers of reservation Indians in Nevada under the jurisdiction of the Bureau and also the number of non-reservation Indians "you have." This

would imply some idea on the Senator's part that the Bureau had responsibility for non-reservation Indians, at least in Nevada, a not unreasonable conclusion in view of the Senator's conversation with Dr. Wagner (ante) two years before. At the same time Dr. Rabeau repeated his predecessor's ideas of service to off-reservation Indians (pages 66, 73-74).

The next year the Bureau again repeated to the Senate its on or near policy when Commissioner Bennett made the statement contained in our reply brief (pages 67-68), and announced the opening of five metropolitan service offices (page 69) and his assistant Mr. Cormock announced yet another direct subsidy program for off-reservation Indians (page 70). Mr. Bennett further stated that he thought no additional legislation was needed to authorize these programs (pages 71-72).

We have also included excerpts from reports which although they follow by some 2 to 4 years the events here in issue shed considerable light on the question at hand.

In the first session of the 92nd Congress Senator Bible qualifies. The response of the Bureau is at best garbled. once again attacked the question of Bureau jurisdiction, stating (page 75) "I have never been quite sure who They mention for the first time a blood quantum requirement and restate the on or near requirement. When the Senator asked for a definition of near, the only response was not Manhattan. Mr. Stevens (page 76) responded that the Bureau provided benefits not otherwise available to those living near reservations and stated that otherwise services are confined "as much as possible" to Indians living on trust land. Later the Bureau supplied the Senator with a detailed list which includes:

"32,600 Indians reside nearby, who may receive services because of their proximity and mobility. For example, Indians working in nearby towns frequently maintain close contact with reservation people and affairs; they may visit the reservation or return temporarily or permanently" (page 76).

The report goes on: "Every Indian in the service area may not be receiving BIA services. He may not apply

for them, or he may not meet conditions for certain services. For example, adult vocational training is limited to persons with one-fourth or more Indian blood, land services benefit owners and operators of trust land, and *BIA welfare services are supplemented to local provisions of welfare.*" (emphasis added; page 77). Since Appellants are just such nearby residents seeking just such a supplement this report is tantamount to a statement to the Committee by the Bureau that Appellants herein are in fact being served.

At the same time the committee was told that the Bureau was building houses for small bands of Indians with land ownership problems or without land (page 78). The House hearings of that year present the clearest statement ever made on the question at hand. It begins with the announcement of the long awaited opening of the Phoenix Indian Medical Center that "will serve some 55,000 Indians *living in and around Phoenix* and in reservation communities in Arizona, California, Nevada and Utah" (emphasis added; page 80). Then follows the testimony of Congressman Fraser of Minnesota concerning his efforts to assist off-reservation Indians (pages 82-85). His experience closely parallels the development of the arguments in this case. He says that the Bureau initially told him that they were limited by Congress to serving Indians on trust land but backed off from that position when they could find no statutory report. He states, "Assistant Secretary Loesh finally admitted last year that the hands off policy regarding urban Indians was based on informal understandings with the congressional appropriations committees. The only documentation he can provide, however is some ambiguous language in a 1951 Senate appropriations report referring to the Johnson-O'Malley program. I have finally come to realize that the Bureau's approach to urban Indians is based on certain, policy assumptions that have not been articulated" (page 82).

Mrs. Hansen, the Committee Chairman then stated with regard to the statement of Mr. Loesch, "This is not true. Assistant Secretary Loesch has never reached any understanding in that connection with this com-

mittee. This was the first year that we discussed the problem in detail with the BIA" (page 84). She also stated that the only reason the Bureau was reluctant to assist urban Indians was that they were afraid of interfering with their entitlement to local services. She later again stated, "Our appropriation bill has never carried a limitation on expenditures concerning Indians (page 85).

Later, Mr. Bruce again gave the definition of eligible Indians in substantially the same language as he had given to Senator Bible, and admitted that the term "near" had never been defined (pages 86-88).

In conclusion, the material presented at best indicates an attempt to exclude Indians living in urban centers such as Los Angeles, San Francisco, Denver, Chicago and Minneapolis and even this exclusion has been expressly denied by the Chairman of the House Committee on Appropriations for the Department of Interior and Related Agencies, and there exists no other basis for it.

Submitted this 17th day of February, 1972.

/s/ Lindsay Brew
LINDSAY BREW for himself
and
WINTON D. WOODS, JR.
Attorneys for Appellants

A copy of the foregoing was served upon Carl Strass, attorney for Appellee by placing same in the United States mail with proper postage and addressed to him at the Department of Justice, Washington, D.C. 20530. Dated this 17th day of February, 1972.

/s/ Lindsay Brew

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SUPREME COURT OF THE UNITED STATES

No. 72-1052

ROGERS C. B. MORTON, Secretary of the Interior,
PETITIONER

v.

RAMON RUIZ, *et ux.*

ORDER ALLOWING CERTIORARI—Filed April 23, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.